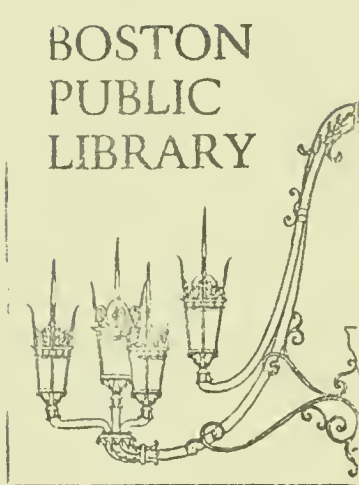


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AMENDED AND RESTATED

LEASE

MASSACHUSETTS TURNPIKE AUTHORITY

to

URBAN INVESTMENT AND DEVELOPMENT CO.

of

COPLEY PLACE

BOSTON, MASSACHUSETTS



Signed By The Parties
and Approved by
Governor Michael S. Dukakis
December 22, 1978

Amended by the Parties
and Approved by
Governor Edward J. King
January 31, 1980

Copley Place,

M 38 T.

CL

M38 T.CL

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LEASE INDENTURE

Indenture of Lease dated as of the 22nd day of December, 1978, Amended and Restated as of the thirty-first day of January, 1980, by and between MASSACHUSETTS TURNPIKE AUTHORITY, a body politic and corporate, organized under the laws of the Commonwealth of Massachusetts (hereinafter variously called "Landlord" or "the Authority") acting herein on behalf of itself and the Commonwealth of Massachusetts, and URBAN INVESTMENT AND DEVELOPMENT CO., a corporation duly organized and existing under the laws of Delaware and having a usual place of business in Boston, Suffolk County, Massachusetts (hereinafter called "Tenant").

DEFINITIONS:

As used in this lease, the following terms shall have the following meanings and references:

- (i) The "Entire Premises" shall refer to that parcel of real estate and the air spaces related thereto, belonging to the Authority, located in the City of Boston, Suffolk County, Massachusetts and more particularly described in Schedule A attached hereto and hereby made a part hereof, including any and all interests of the Authority in adjacent and included streets and ways and the air spaces extending above said parcel.
- (ii) The "Demised Portion", "the Excepted Portion" the "Railroad Easement" and "the Turnpike Area" are defined in Schedule A.

The terms hereinabove defined may be referred to interchangeably herein with upper or lower case initial letters, without any change in meaning or reference being intended thereby.

LEASE RECITALS

The parties hereto recognize and recite the following facts, conditions and determinations upon which the covenants and agreements herein are based.

LR1. The Authority is the owner of the Entire Premises, acquired and held by it for the purpose of laying out, construction and operation of the Boston Extension of the Massachusetts Turnpike.

LR2. The Authority has found that future use and operation of buildings and facilities as permitted by this Indenture, for the non-turnpike purposes permitted herein, and the exercise of any and all other rights granted to Tenant herein will not in any way be detrimental to the maintenance, use and operation of said the Boston Extension either presently or during its future operations, and the Authority has found, after consultation with the Mayor of Boston, that the construction and use of such buildings will preserve and increase the amenities of the community in the City of Boston.

LR3. Tenant intends to build a development (herein called the "Development") upon the Demised Portion.

LR4. The Development may require, for its access, support and use, that it be located in part over the Turnpike Area and over the Railroad Easement and in part over Stuart Street, which will be relocated, and in part over Harcourt Street, part of which will be discontinued, to accommodate the plans for the Development.

LR5. The Authority deems advisable, on behalf of itself and the Commonwealth of Massachusetts, the leasing of the Demised Portion, upon the terms and conditions set forth in this lease, reserving to itself and to the Railroad, to the extent of its easement rights, and excepting from this lease, the Excepted Portion, but providing to the Tenant rights of foundation and support within the Excepted Portion for the buildings, structures and other facilities erected or to be erected, used or maintained in the Demised Portion.

NOW THEREFORE, pursuant to the authority granted to it by Chapter 354 of the Acts of 1952, Chapter 505 of the Acts of 1963 and Chapter 528 of the Acts of 1968 of the General Court of Massachusetts, and by virtue of any and every other power express or implied vested in it, the Authority as Landlord does hereby demise and lease, on behalf of itself and the Commonwealth of Massachusetts, to Tenant, and Tenant does hereby hire and take from Landlord, for the term, at the rentals and additional rentals and on the terms, conditions and limitations herein contained, and with the rights, exceptions and reservations set forth, the Demised Portion; and the Landlord and Tenant mutually covenant and agree as follows:

ARTICLE I -- THE PREMISES

Demised Portion and Excepted Portion

1.1 The Demised Portion and the Excepted Portion shall be as defined in Schedule A. Except to the extent that the rights of the Tenant to support and foundation from, or access within, the Excepted Portion as specifically set forth hereinbelow, the Excepted Portion is expressly reserved and excepted unto the Landlord.

ARTICLE II -- TERM

Term of this Lease

2.1 TO HAVE AND TO HOLD the Demised Portion and the rights related thereto specifically set forth herein for the term of ninety-nine (99) years beginning December 15, 1978, unless sooner terminated as provided in this lease or any Schedule hereto.

Term Not Affected

2.2 The term of this lease shall not be affected by the dissolution of the Massachusetts Turnpike Authority or transfer of its properties to the Commonwealth or to any other successor in title, but such term and the leasehold estate created hereby shall continue in effect, notwithstanding such dissolution or transfer.

ARTICLE III -- RENT

Rent

3.1 Tenant agrees to pay to Landlord, at such place as Landlord may by notice in writing direct, rent in the amounts determined and payable from time to time as set forth in Schedule B hereto.

Taxes to the City of Boston

3.2 Tenant shall pay to the City of Boston all taxes on the buildings and other things now or hereafter during the term erected on or affixed to the Entire Premises pursuant to this lease, by or on behalf of or for the account of the Tenant, in the same manner and to the same extent as if Tenant were the owner of the Entire Premises in fee, including taxes for the full year of the year during which this lease may terminate; except that no part of the value of the land comprising the Entire Premises shall be included in the assessment on which such taxes are levied, and neither Tenant nor Landlord shall be required hereunder to pay any such taxes based on any land value. Tenant further agrees that, in the event the tax provision contained in said Chapter 505 of the Acts of 1963 (whereby such buildings and other things erected or affixed pursuant to this lease are to be taxed to Tenant as if it were the owner of the fee) is determined by any Court of competent jurisdiction to be inapplicable, or the Tenant's tax obligation contained in the foregoing provision unenforceable, then the Tenant agrees to pay annually to said City of Boston, as additional rent hereunder, a sum of money in each tax year equal to the amount of and in lieu of the taxes which would otherwise be assessed to and paid by the Tenant hereunder, less any payments which Tenant may have made or may be obliged to make to said City of Boston with respect to such tax year pursuant to any agreement, understanding or arrangement with said City.

Rights to Seek Abatement

3.3 Nothing herein shall limit or prevent the application by Tenant at its own expense for any abatement of taxes or additional rent in lieu of taxes imposed on it herein, but in any such proceeding or application Tenant shall not contest the validity of this lease.

Payments Arising out of Defaults

3.4 Tenant shall pay as additional rent any and all sums which may become due the Landlord by reason of the failure of Tenant to comply with any of its covenants in this lease, and any and all damages, costs, and expenses which Landlord may suffer or incur by reason of such failure or any other default of Tenant hereunder. As to any claim of a party other than Landlord, Landlord will give notice in writing to Tenant, and an opportunity to defend such claim on behalf of itself and Landlord. As to any such claim, if Tenant elects to contest the same, no amount will be due hereunder until final judgement has been entered in favor of the claimant and all rights of appeal therefrom have expired, or any appeals have been determined in favor of claimant. The preceding two sentences are subject to the provisions of Schedule D, to the extent that such provisions set forth a different procedure for the payment of assessments by Tenant.

Rent to be Net

3.5 This lease shall be deemed and construed to be a "net lease" and except as herein otherwise expressly provided, Landlord shall receive all annual rent and additional rent and all

payments hereunder to be made by Tenant free from any charges, assessments, impositions, expenses, or deduction of any and every kind or nature whatsoever.

ARTICLE IV -- TENANT'S RIGHTS TO FOUNDATION AND SUPPORT

Columns

4.1 Tenant shall have the appurtenant right and easement, subject to the obligations herein contained, to construct, use, maintain, repair and replace or renew as may be required, supporting columns, bearing walls, retaining walls and other supports, together with the footings therefor on and in the Excepted Portion for the Demised Portion pursuant to any provisions of this lease, and the right to place, maintain, repair, replace and use lines for utilities ~~and services on the~~ Excepted Portion. Insofar as such appurtenant rights and easements may affect the easement of Railroad, the Tenant's exercise of such appurtenant rights and easements shall be subject to Tenant's obtaining the prior approval of Railroad. Tenant agrees, at its cost and expense, to maintain and keep in good repair and appearance such columns, bearing walls, retaining walls and other supports and to renew or replace the same if required for the safety of travel in and use of the Excepted Portion or the adjoining portions of the Turnpike, but in case of damage to or destruction of any of said columns, walls or other supports by third parties, such parties shall not be relieved hereby of any legal liability which may arise in favor of Landlord or Tenant or both on account of such damage or destruction. Any such work of maintenance or repair

shall be done only in such manner, at such times, and subject to such supervision and control, as the Landlord shall have specifically approved in writing after at least ten (10) days prior written notice (or such shorter notice as may be reasonable in emergencies) from Tenant of the work proposed, identifying in detail the materials and methods to be employed and the persons intended to perform the work. In the case of renewal or replacement of any of such columns, retaining walls and other supports, Tenant shall give at least thirty (30) days prior written notice of such proposed work and, in addition to the matters specified in the preceding sentence, shall submit to Landlord finished plans, drawings and specifications for the work proposed; and no such replacement or renewal shall be undertaken except in accordance with specific approval of Landlord following the giving of such notice, and any such work shall be carried on in such manner and at such hours and subject to such rules and precautions, control and direction as Landlord may specify, having primary regard for Landlord's objective to keep open for safe and uninterrupted travel its Turnpike passing through the Excepted Portion for purposes of such maintenance, repairs, replacement or renewal, as Landlord shall specifically designate in each case, it being recognized as a mutual objective of the parties that, consistent with the Landlord's other responsibilities, such access is to be furnished with the least practicable inconvenience and expenses to Tenant, its agents and contractors.

Addendum

4.2 Landlord and Tenant agree to execute an Addendum to this lease specifically describing the support easement areas upon completion of construction of the Development, or at Tenant's option, at such time as the plans and specifications have been approved by Landlord.

No Access Line

4.3 For the duration of this lease, Tenant and its agents, servants, employees, licensees, invitees, guests and customers shall have the right and privilege to the extent necessary for its activities in accordance with this lease, of passing over the "No Access Line" established by Order of Taking Numbers B9, B16, Alt. #1.B19, Alt. #1.B16, B22, Alt. #1-B22 and B50. Massachusetts Turnpike Authority recorded with the Suffolk Registry of Deeds in Book 7673, Page 12, Book 7670, Page 490, Book 8340, Page 413, Book 7673, Page 32, Book 8340, Page 435, Book 7710, Page 172, and noted on Certificates of Title No. 71269 and 74186.

The aforesaid "No Access Lines" are subject to change in locations from time to time in accordance with boundary adjustments of the Boston Extension of the Massachusetts Turnpike.

ARTICLE V -- LANDLORD'S RIGHTS IN DEMISED PORTION

5.1 In addition to rights of inspection hereinbelow conferred on Landlord, and other rights in event of default or to cure defaults, Landlord shall have the following retained rights, appurtenant to the Excepted Portion:

Lighting

(a) to affix and maintain at its cost and expense, such cables and lighting equipment or fixtures as it may desire to such parts of Tenant's buildings as extend over and above the Turnpike Area and to such parts of the walls and columns referred to in Section 4.1 as it may desire limited to such points of such buildings as are or will be visible from the travelled way of the Boston Extension after the completion of such buildings;

Utilities Generally

(b) to employ any wall or the columns referred to in Section 4.1 and the underside of Tenant's said buildings over and above the Turnpike Area for attaching or supporting such other pipes, cables and utility services or connections as it may desire but not in such a manner as to overload such walls, columns or buildings; and

Access

(c) to travel on and over those parts of the Demised Portion on which buildings and other structures are not, at the time, situated, for the purpose of enabling the Authority (i) to have access to the Turnpike Area, and (ii) to deliver and remove material to and from the Turnpike Area, provided that the exercise of such rights referred to in this Section 5.1(c) by the Authority does not interfere with the Tenant's use of and business operations on the Demised Portion.

Traffic Control Devices

5.2 Landlord shall retain the right to install, maintain, repair, replace, and operate any traffic control devices in that part of the Demised Portion included within the Turnpike Area, including such traffic control devices as now exist or may in the future be developed or used in Turnpike operations; however, such devices shall not unreasonably interfere with the Tenant's use of the Turnpike Area as granted by this lease.

Assignment by Landlord

5.3 Landlord shall have the right and privilege of assigning in whole or in part any of its rights in the Demised Portion.

ARTICLE VI -- ADDITIONAL COVENANTS OF TENANT

Tenant further agrees:

No Interference With or Danger to Turnpike or Railroad Traffic

6.1 To maintain and control the Demised Portion in such manner that neither Tenant, its sub-tenants nor customers nor any of them shall interfere with activities of Landlord in the Excepted Portion or on the adjoining portion of the Turnpike, or of Railroad to the extent of its easement, or impede or endanger the safe and orderly flow of traffic in and along the Turnpike Area. Promptly upon written notice from Landlord (or from Railroad if only the Railroad Easement Area is involved), Tenant agrees to cease and desist, and to cause its subtenants if affected thereby to cease and desist from usages or practices or from the causing of or the maintenance of a condition represented by the Landlord

or Railroad to constitute a hindrance or danger to such safe and orderly flow of traffic.

Signs to be Approved

6.2 That any exterior signs, including on-premises signs, displays or devices placed within the Demised Portion, visible from the travelled way of the Boston Extension after the completion of Tenant's buildings, shall be constructed and maintained only with the prior written approval of Landlord.

Floor Loads

6.3 Not to suffer, allow or permit the loading of any of the floors of any buildings now or at any time erected in the Demised Portion beyond the loads which the same will safely support.

Explosives, Smoke, Odors, etc.

6.4 Not to use or keep or permit to be kept within the Demised Portion any materials or substances of a flammable or explosive nature except in accordance with rules and regulations of the public authorities having jurisdiction and of the New England Insurance Rating Association, or its successors; in its occupancy and use of the Demised Portion, not to permit, and promptly after notice thereof from Landlord to take such reasonable action as may be necessary to eliminate, hazardous or objectionable and substantial amounts of smoke, fumes, vapor, odors, or similar substances, including without limitation of the foregoing, radioactive contamination, which affect the Turnpike Area, nor will it subject the Turnpike Area to, and promptly after no-

tice thereof from Landlord take such action as may be necessary to eliminate, hazardous or objectionable and substantial amounts of drippings, droppings or discharges of any kind, including rain or snow.

Utilities

6.5 At its own cost and expense, to arrange and pay for all utilities and services (other than those contracted for or used by Landlord or its agents, servants, employees, licensees, invitees, guests or customers) the non-payment of which may give rise to a lien or a charge against the real estate or the owner thereof, it being understood that none of such utilities or services are to be furnished by Landlord. If or to the extent that the necessary lines for such services run through or onto the Excepted Portion, Tenant shall have the right to maintain and to repair said lines, subject to the requirements hereinabove set forth in Section 4.1.

Ventilation and Lighting of Turnpike Road Area

6.6 At its own expense to install a lighting system acceptable to and approved by Landlord for that portion of the Turnpike Area over which Tenant at any time constructs a covering structure. The lighting system for such covered area will be generally similar to the lighting facilities of similar covered areas elsewhere on the Turnpike. Landlord will maintain and operate the lighting system, but Tenant agrees to reimburse Landlord for the actual costs thereof periodically, and at least annually, when billed by Landlord. If Tenant shall default in

such reimbursement for thirty (30) days after notice to Tenant of such default, the amount of such reimbursement shall be deemed additional rent reserved under this lease, and the Landlord shall have the same remedies as in case of default in the payment of rent as herein provided. The provisions of 5.1(a) refer to additional lighting which Landlord may choose to install in addition to the ordinary lighting herein referred to. After completion of the construction of the cover or slab over the Turnpike Area, or at any time thereafter, Tenant shall, in compliance with applicable requirements of the Landlord, install and thereafter operate and maintain at Tenant's cost and expense, such ventilating ducts, pipes, equipment and machinery as Landlord may reasonably deem necessary to ventilate that portion of the Turnpike Area over which Tenant at any time constructs a covering structure. The Tenant will not be required to replace such ducts, pipes, equipment and machinery, once installed at Landlord's request, during the useful life thereof.

No Claim for Turnpike Noise, Fumes, etc.

6.7 Not to make any claim against Landlord for or by reason of the ownership, use or occupancy by Landlord or others of the Turnpike Area or other areas of the Excepted Portion, whether on account of noise, vibration, fumes, odor, electrical interference or other causes, and Tenant shall stipulate and require a similar waiver of claim as to anyone occupying all or any part of the Demised Portion whether by sublease or other written agreement with Tenant (except for business invitees, customers and employees);

provided, however, that nothing in this paragraph shall release Landlord from liability for injury to persons or property caused by Landlord's negligence.

Protection of Turnpike Area

6.8 Except as provided hereinbelow, in case of fire or casualty or action of public authority in consequence thereof or in case of exercise of eminent domain, to maintain those portions of the Demised Portion which are over the Turnpike Area and adjacent thereto as needed, at Tenant's cost and expense, in order (i) adequately to ensure the safety of persons and property using or passing through the Turnpike Area, and (ii) not to impede normal operations thereon. Tenant may make such further repairs and replacements as it may desire, subject to the provisions of Section 6.9.

Prior Written Approval of Landlord

6.9 Any repair or maintenance to the exterior of any buildings over the Turnpike Area which might endanger the safety of such persons and property or impede such normal operations shall require prior written approval of Landlord except in cases of emergency, in which cases Tenant shall give Landlord such notice in such form as the circumstances permit. Such permission may be subject to such restrictions and requirements as Landlord may deem necessary or desirable for the safety and convenience of travel on the Turnpike Area during the particular work proposed.

Sidewalks, Roadways, etc.

6.10 To keep in good repair all surfaced roadways, walks, curbs, and gutters and parking and loading areas in the Demised

Portion, and the sidewalks in front thereof, and to keep such sidewalks and roadways in use clear and free of snow and ice, except to the extent that the City of Boston assumes the responsibility therefor, and the exterior of all buildings on the Demised Portion clean and neat.

Compliance with Law, Safety

6.11 At Tenant's cost and expense, to make all repairs, alterations, additions or replacements to the Demised Portion required because of any use of the Demised Portion by any law or ordinance or any order or regulation of any public authority or The New England Insurance Rating Association, or its successors, or by the reasonable rules and regulations of the Landlord as they shall from time to time be promulgated; to keep buildings on the Demised Portion equipped with all safety appliances so required because of such use; to procure or cause to be procured any licenses and permits required for any such use or for any construction to be performed by Tenant under this lease; and to comply with state and national building codes as required by Section 15A of Chapter 354 of the Acts of 1952, as amended, and the orders and regulations of all governmental authorities relating to the Demised Portion including without limitation orders and regulations relating to Tenant's subcontractors.

Regulations; Affirmative Action

6.12 To comply at all times with the provisions of the by-laws, rules and regulations of the Massachusetts Turnpike Authority, and all law and orders and regulations relating to nondiscrimination and equal employment opportunities, all as from

time to time amended, insofar as they may be applicable to the Demised Portion. The Tenant recognizes the need for vigorous pursuit of the objectives set forth in Executive Order No. 116 and, in its own practices and those of contractors and others engaged by it, to employ and to encourage others to employ, affirmative action programs designed to increase the employment of minority persons and organizations. Attached to and made a part of this lease, and marked "Schedule D", "Schedule D-1" and "Schedule D-2" are certain agreements of the parties relating thereto.

Holding Landlord Harmless

6.13 To save Landlord harmless and indemnified from any liability for injury, loss, accident, or damage to any person or property, and from any claims, actions, proceedings and costs in connection therewith, including reasonable counsel fees, arising from wrongful act or negligence of the Tenant, or its agents, servants, employees, licensees, invitees, guests and customers or arising from any use made or things done by Tenant or anyone claiming under it, on or about the Demised Portion, or otherwise occurring thereon, and not due to wrongful act or negligence of the Landlord, or its agents, servants or employees. Tenant shall require its subtenants either (a) to indemnify Landlord and Tenant to the same extent or (b) to maintain insurance reasonably satisfactory to Landlord and Tenant protecting them from any such claims or liability, or both.

Back Bay Water Level

6.14 After completion of the construction of the Development, to make periodic checks of the water level in the vicinity of the Entire Premises in the Back Bay and, if the water level at any time appears to be adversely affected by conditions or practices resulting from Tenant's occupancy and use of the Demised Portion, to make special efforts to restore and maintain a proper water level and to indemnify and save the Landlord harmless from any direct or consequential damages resulting from changes in the water table affecting either Landlord or others in such vicinity and attributable to the use and occupancy of the Demised Portion by Tenant, or those holding under Tenant.

Tenant Uses

6.15 The Development has been initially designed as a multi-use project including hotel, office, residential, retail and service store uses, health club, theatre, meeting room, ballroom, restaurant, exhibit hall and garage facilities, but the Tenant may use or cause to be used the Demised Portion for any lawful purpose.

Landlord's Entry for Inspection, etc.

6.16 To permit Landlord to enter into the Demised Portion at all reasonable times for the purpose of inspecting the same to protect the safe and continuous operation of the Turnpike, or for exercising other rights retained by Landlord hereunder as they pertain to the operation of the Turnpike. Such right of entry shall not impose, nor does Landlord assume, any responsibility or liability for the repair, maintenance or supervision of the Demised Portion.

Removal of Goods on Termination

6.17 At the expiration or earlier termination of this lease, to remove such of Tenant's goods and effects as Landlord shall require, or as Tenant may elect if not so required.

Tenant's Acceptance of Premises and Title Thereto

6.18 That Tenant has leased the Demised Portion after a full and complete examination of the same and sub-surface conditions, as well as the title thereto and its present uses and non-uses, and accepts the same in the condition or state in which they or any part thereof now are, without any representation or warranty express or implied in fact or by law, on the part of the Landlord, and without recourse to Landlord as to the title thereto, the nature, condition or usability thereof, or the use or uses to which the Demised Portion, or any part thereof, may be put.

Liens

6.19 That Landlord shall not be liable for any labor or materials furnished or to be furnished to Tenant, and no mechanic's or other lien for any such labor or materials shall be attached to or affect the reversionary or other estate or interest of Landlord in and to the Demised Portion. Whenever and as often as any mechanic's lien shall have been filed against the Demised Portion, based upon any act or interest of Tenant or of anyone claiming through Tenant, Tenant shall forthwith take such action by bonding, deposit or payment as will remove or satisfy the lien, and if Tenant continues in default of said obligation for thirty (30) days after notice to Tenant, the Landlord may pay the

amount of such mechanic's lien, or discharge the same by deposit, and the amount so paid or deposited, with interest thereon, shall be deemed additional rent reserved under this lease, and shall be payable forthwith with interest at the rate of six percent (6%) per annum from the date of such advance, and with the same remedies to Landlord as in case of default in the payment of rent as herein provided.

Payment of Municipal Assessments and Charges, etc.

6.20 To pay to the proper municipal or other public authorities from time to time as they shall become due and payable all sums that may during the term of this lease be lawfully assessed, imposed or charged upon the Demised Portion, or any part thereof, for water rates, sewer charges, betterment assessments, or any other municipal services, rates, rents or charges.

Surrender of Demised Portion

6.21 Peaceably to give up and surrender possession to the Landlord of the Demised Portion at the expiration or sooner termination of this lease, the parties declaring that all buildings, facilities and improvements then standing or existing upon the Demised Portion, including fixtures which have become part of the realty, shall be the property of Landlord or its successor in title, and that all such buildings, facilities, improvements and fixtures shall be, unless otherwise provided for herein, in their then condition and state of repair, whatever the same may be. Any fixtures, trade fixtures, personal property or belongings of Tenant, and of those claiming under Tenant, left upon the Demised Portion at the time of surrender or at the termination of this lease shall be deemed to have been abandoned.

ARTICLE VII -- INSURANCE

Insurance to be Carried by Tenant

7.1 Tenant agrees to maintain in force at its expense during the term hereof, the following insurance:

(a) Insurance covering the Demised Portion in such amount as will be required for the demolition of all or any portion of the buildings and improvements on the Demised Premises which have been damaged or destroyed and which are not repaired or rebuilt by the Tenant, as from time to time determined by agreement of the parties or, if such agreement is not reached, then in such amount as is determined by appraisal made at the expense of the Tenant by an accredited ~~insurance appraiser named by the~~ Tenant and approved by the Landlord, such approval not to be unreasonably delayed or withheld. "Demolition" for this purpose includes all costs and expenses of razing buildings and improvements, carting of debris from the premises, filling holes and excavations, clearing the site and leaving it in a clean and level condition. Such insurance shall provide for demolition, whatever the cause of damage to or destruction of such buildings and improvements, whether insured or uninsured, insurable or uninsurable, and shall include demolition ordered by any proper governmental authority.

(b) Comprehensive personal injury and property damage liability insurance, including, but not limited to, the liabilities (to the extent insurable) assumed by the Tenant in Article VI., Sections 12 and 13 of this lease, and

including liability resulting from the use of automobiles and aircraft, completed operations hazards, and contractual liability, subject to a limit of not less than Five Million Dollars (\$5,000,000) for each occurrence covering the Demised Portion;

(c) Workmen's compensation and Employer's Liability insurance.

(d) The insurance in 7.1(b) above shall also cover claims or damages arising on account of any injury to persons or damage to property on the Turnpike Area or other turnpike areas adjoining or in proximity to any part of the Demised Portion, resulting from the use or maintenance or occupancy by the Tenant or anyone claiming under it, of the Demised Portion;

(e) Such liability or other insurance as may be required by the City of Boston to be carried by Landlord or Tenant or both in connection with the portion of the Demised Portion over or adjacent to Stuart or Harcourt Street.

Insurers, Policies and Provisions

7.2 All insurance required hereunder shall be effected with insurers acceptable to Landlord and under valid and enforceable policies naming Landlord and Tenant, as their interests appear, as insureds thereunder. Any insurer rated B+ or higher in Best's Insurance Manual shall be deemed acceptable to Landlord. Nothing herein shall prevent such insurance being effected by blanket policies covering other property of the Tenant, so long as the coverage required herein is afforded. All insurance required hereunder:

(a) Shall provide by endorsement for immediate written notice to the Landlord of any material change in it and at least thirty (30) days prior written notice to the Landlord if it is to be cancelled or not renewed.

(b) Shall be evidenced by the Tenant's promptly furnishing the Landlord certified copies of all pertinent policies.

Subrogation and Waiver of Rights

7.3 All insurance, whether or not required hereunder, carried by Landlord or Tenant, with respect to the Demised Portion or the Excepted Portion or occurrences thereon, if either party so requests and it can be so written, and if it does not result in additional premium or the requesting party agrees to pay any additional premium, shall include either provisions designating the requesting party as one of the insureds or provisions denying to the insurer acquisition by subrogation or rights of recovery against the requesting party to the extent the rights have been waived by the insured prior to occurrence of loss or injury. Each party, notwithstanding any provisions of this lease to the contrary, waives any rights of recovery against the other for loss or injury against which the waiving party is protected by insurance containing provisions denying to the insurer acquisition of rights by subrogation, reserving, however, any rights with respect to any excess of loss or injury over the amount covered by the insurance.

Landlord's Rights if Tenant Fails to Insure

7.4 In case Tenant fails to furnish Landlord with any policy of insurance, or receipt for payment of premium thereon, or in case Tenant fails to furnish Landlord with a renewal policy of insurance and receipt for payment of the premium of the renewal policy thirty (30) days before the expiration of an existing policy, Landlord may, at its option, but shall not be required to, procure the same or pay the premium therefor; the cost thereof shall be payable by Tenant on demand of Landlord and shall be deemed to be and collectible as, additional rent and shall bear interest at the rate of six per centum (6%) per annum, from the date of such payment by Landlord.

ARTICLE VIII -- REPAIR OF DAMAGE BY FIRE OR CASUALTY AND USE OF INSURANCE PROCEEDS

Damage or Destruction; Temporary Repairs

8.1 If the buildings or improvements over or adjacent to the Turnpike Area shall be damaged or destroyed by fire or other casualty, or if such damage or destruction shall occur elsewhere in the Demised Portion so as to affect in any way the safety of persons or property using or passing through the Turnpike Area, the Tenant shall promptly, at its expense, and without regard to proceeds of any insurance which may be recoverable on account of such damage or destruction, proceed to make such temporary repairs and to perform such work as the removal of debris or dangerous materials and structures as will enable travel to continue in the Turnpike Area in a safe and uninterrupted manner to the satisfaction of the Landlord. If or to the extent that the Tenant fails to take all reasonable steps to comply with the

provisions of this Paragraph 8.1 with all due dispatch following such damage or destruction, then the Landlord may, but shall not be obligated to, demolish such destroyed or damaged buildings, remove the debris, and clear and level the site and the cost thereof shall be payable to the Landlord on demand, and shall be deemed to be, and collectible as, additional rent hereunder and shall bear interest at the rate of six percent (6%) per annum, from the date of such payment by Landlord.

Repair by Tenant of Damage; Disbursement
of Insurance Proceeds

8.2 (i) Without limitation of Tenant's rights under Section 8.3 hereof, if the buildings or improvements on the Demised Portion or any part thereof, shall, at any time or times during the continuance of the term of this lease, be destroyed or damaged by fire or other casualty, and as often as any such building or improvement may be destroyed or damaged by fire or other casualty, Tenant, at its expense and subject to the provisions of this lease, shall either (a) rebuild or repair the same upon the general plan and dimensions as before the fire or casualty (unless another plan is agreed upon, in writing, by Landlord and Tenant); or (b) demolish the damaged or destroyed buildings or improvements, remove the debris and clear and level the site; in the latter case so much of the proceeds of the insurance provided for in Section 7.1(a) as may be necessary shall be used for and applied to the cost thereof, but the Tenant's obligation to pay for such demolition, removal, clearing and levelling shall not be limited to such proceeds. In the case of

(b) Tenant shall have the right, while this lease is in effect, later to erect improvements thereon for any uses permitted hereby, subject only to Landlord's right of review set forth in Section 8.4 hereof.

(ii) To the extent such damage shall pertain to improvements over or adjacent to the Turnpike Area, a proportionate amount of the proceeds of any insurance provided for in Section 7.1(a) shall be deposited in a bank account in the name of the Landlord and Tenant, which shall be a special account, provided, however, that if the any Mortgagee of all or any part of the Demised Portion or any interest therein ("Mortgagee", which term shall include the successors or assigns of any such Mortgagee) shall so request, the insurance proceeds shall be deposited in an account in the name of Mortgagee, Landlord and Tenant jointly; disbursement of the insurance proceeds from any such account for demolition, removal, clearing and levelling shall be made against vouchers properly certified by a competent architect registered under Massachusetts law selected by the Tenant and supervising the work; the Mortgagee (and the Landlord, if applicable) may, but shall not have any duty to, inspect the work or verify the accuracy of such vouchers so certified; and Mortgagee, or, if applicable, Landlord and said Mortgagee, may withhold from such amount so to be paid ten per cent (10%) thereof until the work of demolition, removal, clearing and levelling shall have been completed and proof furnished that no lien or liability will attach to the Demised Portion or to the Landlord or Tenant in connection therewith or in lieu thereof Tenant may furnish a surety company bond to assure such completion.

(iii) Any insurance proceeds remaining in Landlord's and Tenant's, or, if applicable, Landlord's, Tenant's and Mortgagee's special account, after application thereof to costs and expenses of such demolition, removal, clearing and levelling, shall be paid to Tenant.

Tenant's Option to Terminate upon Damage
or Destruction after Completion of Improvements

8.3 At any time after completion of the improvements contemplated hereby, in the event any principal element of the Development shall be damaged or destroyed by fire or other casualty, then at the option of the Tenant exercised in writing, the following shall occur:

(a) Tenant shall demolish all improvements other than those which Landlord shall instruct Tenant in writing within thirty (30) days of Tenant's notice not to remove. The proceeds of insurance provided for in 7.1(a) hereof shall be used for the applied to the cost thereof as provided in Section 8.2(ii) hereof.

(b) This lease shall terminate, and any other insurance proceeds or other claims or rights arising with respect to such damage or destruction shall be the property of Tenant.

General Provisions Governing Repairs and Reconstruction

8.4 (i) In any such work of reconstruction, restoration or repair described in this Article VIII will involve any part of the Demised Portion above the Turnpike Area or the Railroad Easement Area or in such proximity thereto that the carrying on of such work might create risks to the safety of travel thereon,

or impede normal operations thereon, then such work shall be undertaken and carried on only in accordance with construction plans, methods, and procedures, and at such times and subject to such controls as the Landlord shall approve, and in accordance with said agreement between the Authority and the City of Boston of January 29, 1970, based on Landlord's primary regard for its objective to keep open its Turnpike for safe and uninterrupted travel. Landlord's approval rights hereunder are specifically limited to that portion of the work of restoration or repair as shall involve the Turnpike Area or the Railroad Easement Area, and are further limited to the aspects of such restoration, reconstruction or repair which might create risks to safety or impede normal operations of the Turnpike or the Railroad, and shall not include the right to withhold approval of Tenant's design or uses, except as may be required under said agreement of January 29, 1970.

(ii) If such work will not involve any such part of the Demised Portion above or in proximity as aforesaid to the Turnpike Area or to the Railroad Easement Area, then Tenant shall furnish complete plans, specifications, and other construction details for the proposed work at least thirty (30) days prior to the commencement thereof, and such work shall thereafter be carried on only in conformity therewith, and with said agreement of January 29, 1970, but specific approval by Landlord with respect thereto shall, not except as necessitated by said agreement, be required.

(iii) If Landlord does not so approve Tenant's proposed work in writing as to such areas where such approval is required, (which approval may not be withheld or delayed unreasonably, as provided specifically in Section 14.11), it shall set forth promptly and in writing the reasons for such refusal to approve and Tenant shall have the right to refer the same to binding arbitration under the rules of the American Arbitration Association. The parties will share the costs of such Arbitration, and will instruct the Arbiter that the intended result is as promptly as possible to establish plans, specifications and construction details for the proposed work which adequately protect the Turnpike's and Railroad's interests but permit the work to commence as soon as reasonably possible.

Damage Caused by Acts or Omissions of Landlord

8.5 Notwithstanding any other provision of this Article VIII, if any damage or destruction is caused by, or is the result of, any act or omission by Landlord or any agent, servant, or employee of Landlord, Tenant shall do the work and make the repairs as applicable, and Landlord shall pay to Tenant an amount equal to the cost thereof less the amount of any insurance proceeds payable to Tenant by reason of such damage or destruction.

ARTICLE IX -- EMINENT DOMAIN

Taking of Whole, or Rendering Remainder Unusable; Termination

9.1 If the whole of the Demised Portion or all of the buildings located therein or thereon shall be taken by any exercise of the right of eminent domain by any public or other autho-

rity, or if part only of the Demised Portion or of said buildings is so taken or damaged by any such exercise, and neither the remaining part or the part damaged can, by reasonable expenditure, be restored for use by Tenant and its subtenants to a usable and economically feasible business enterprise of a comparable kind and quality, as immediately before the taking, then this lease and the term hereof shall terminate as of the day when possession is required by the taking authority or the date when such damage occurs, whichever is earlier, and all rent and other payments hereunder shall be apportioned as of the date of termination.

Taking Proceeds; Demolition

~~9.2~~ In the event of a taking or partial taking described in 9.1 above, resulting in the termination of the leasing of the entire Demised Portion, the award therefor and all claims with respect thereto shall be the property of the Tenant in their entirety, and Landlord shall have no claim thereto whatsoever, but at Landlord's written request in the event of such a partial taking Tenant shall, at its cost and expense demolish all improvements remaining after taking.

Taking for Temporary Occupancy

9.3 In case of exercise of eminent domain for temporary occupancy or use during the lease term of all or part of the Demised Portion, this lease shall remain in effect and Tenant shall continue to be responsible for the performance of all the covenants, provisions, and conditions of this lease, including payment of rent, which shall not be abated or reduced, but Tenant

shall be entitled to receive the entire amount of any award from the taking authority.

Partial Taking; Taking
Proceeds; Restoration Work

9.4 In case any exercise of eminent domain takes only a part of the Demised Portion, and there is no termination hereof under Section 9.1, then this lease shall continue in effect as to that part of the Demised Portion not so taken, and for such remaining part the rent, additional rent, and other charges payable by the Tenant hereunder shall be abated equitably from the date when possession is required by the taking authority, or the date of damage by such exercise of eminent domain, whichever is earlier, and Tenant shall be entitled to all proceeds of condemnation awards and all rights and claims with respect thereto. In such event, at Tenant's option, it shall either (a) perform such work as may be reasonably necessary to restore the remaining part of the Demised Portion to or any discrete portion thereof, to tenantable condition for Tenant's use; such work to be done by Tenant subject to prior approval and control by the Landlord in the same manner and only to the same extent as provided in Section 8.4 above, and demolish the remainder, or (b) demolish all remaining improvements. In either case Tenant shall have the right thereafter to construct improvements on such demolished area for any uses permitted hereby, subject only to Landlord's right of review set forth in Section 8.4 hereof.

ARTICLE X -- TRANSFER OF LEASEHOLD INTEREST

Tenant's Right to Assign, Mortgage or Sublet

10.1(a) This lease may be assigned by Tenant from time to time in whole or in part, without prior written approval of Landlord, but only if Tenant shall not be in material default under this lease at the time of such assignment in respect of any matter of which it has received written notice of default. Upon its formation of a corporation controlled by the Tenant organized under the provisions of G.L. c. 121 A, the Tenant may assign this lease to such corporation; until construction of the original improvements to be built on the Demised Portion has been completed, Tenant will continue to remain as fully and directly liable on all its obligations hereunder as though no such assignment had occurred. Upon making any such assignment, Tenant shall furnish Landlord promptly with an executed copy of the instrument of assignment and with an agreement in proper form for recording, executed by the assignee and satisfactory to Landlord, in which such assignee assumes and agrees to observe and perform all the covenants, conditions and agreements in this lease on the part of the Tenant to be observed, or performed. Upon the execution and delivery of such assumption agreement, and when construction of the original improvements to be built on the Demised Portion has been completed, the assignor shall be relieved from all further liabilities and obligations hereunder, but until such time, and in respect of obligations arising prior to such time, the assignor will remain as fully and directly liable on all Ten-

ant obligations hereunder as though no such assignment had occurred.

(b) Nothing herein shall prevent, however, and the Landlord hereby consents to (i) mortgage financing, (ii) the assignment of this lease or part thereof to any Mortgagee and (iii) the exercise of the assignee's rights under such assignment.

(c) Tenant and its assignees as aforesaid, may, without further approval, sublease all or any part of the Demised Portion, each such sublease to be made expressly subject to this lease. No such sublease referred to in this clause (c) shall affect or reduce any of the obligations of the Tenant, and all such obligations shall continue in full effect as the obligations of a principal and not as the obligations of a guarantor or surety, to the same extent as though no subletting had been made. In the event of any such sublease, the Tenant shall have the right to cure any default hereunder after notice to Tenant and such subtenant in the manner and within the times provided by Article XIV. The Tenant shall, within ten (10) days after the execution and delivery of any such sublease, deliver a conformed copy thereof to the Landlord, and within ten (10) days after the execution and delivery of any sublease, the Tenant shall shall give notice to Landlord of the term of such sublease, and of the name and address of the subtenant.

(d) Tenant agrees to advise Landlord as to ownership of its outstanding shares from time to time.

ARTICLE XI -- CONSTRUCTION

Erection of Buildings by Tenant

11.1 Tenant will construct on the Demised Portion a number of buildings and other improvements in accordance with Tenant's draft and final environmental impact reports and the comments of the Secretary of Environmental Affairs thereto, of which the principal elements will be hotels, office buildings, an apartment structure, and department stores, together with related parking facilities, stores shops, restaurants, theatres and sports facilities. In erecting such buildings the Tenant shall be entitled to the support provided in Article IV and Tenant agrees that the construction of such buildings shall be in accordance with the terms of Schedule C attached hereto and made a part hereof. Tenant shall furnish to the Landlord and Landlord will furnish to the Design Review Subcommittee of the Citizens' Review Committee (herein called the Design Review Subcommittee) established pursuant to Schedule C of this lease, the plans and specifications for the proposed buildings and appurtenances thereto. It is contemplated that Tenant will furnish to the Landlord preliminary plans and specifications, and that the Landlord will make the same available to the Design Review Subcommittee and, with the advice of the Design Review Subcommittee, will offer suggestions and establish requirements for changes and additions to the plans and specifications, which changes and additions will be incorporated into revisions of plans and specifications until, by a continuous process of revision and review of plans and specifications, final plans and specifications are submitted by the Tenant

to the Landlord and by Landlord to the Design Review Subcommittee. Landlord, with the advice of the Design Review Subcommittee, shall have thirty (30) days from the date of delivery of such final plans and specifications to approve the same or indicate in writing to the Tenant its specific objections thereto. In the event of such a disapproval by the Landlord of the Tenant's final plans and specifications, (i) the Rent Increase Date, (ii) the final date on which Tenant may give notice of cancellation, and (iii) the effective date of cancellation after any such notice shall be extended by an amount of time equal to the time required by Tenant for revision of plans and specifications required to meet Landlord's objections. (See Section 14.12(ii).) Notwithstanding any earlier agreements to the contrary, all studies, materials, plans, specifications and working drawings relating to the Development, other than those relating to roadways, ramps, ramp structures and appurtenances shall be and remain the sole and exclusive property of Tenant. The Tenant agrees that the discontinuance, relocation, and reconstruction of existing roadways, ramps, ramp structures, and appurtenances thereto shall be in accordance with the terms of the construction agreement contained in Schedule C attached hereto. Tenant shall furnish to the Landlord plans and specifications for any changes required in the existing Turnpike roadways, structures, ramps, and appurtenances and shall obtain the Landlord's approval of such plans and specifications prior to performing any work. Landlord shall bear none of the costs and expenses required in

connection with such changes made in the existing Turnpike ramp roads, structures, and appurtenances, but Tenant shall bear all such costs and expenses.

Other Government Permits

11.2 Landlord agrees to cooperate with Tenant in Tenant's efforts to obtain from the City of Boston, or any other governmental agency or authority having jurisdiction, all permits required for the construction of the Development or the access thereto, but all expenses shall be borne by Tenant. Tenant will prepare from time to time such environmental impact statements as are required by law, at the expense of Tenant, and Landlord will cooperate with Tenant in such preparation.

Railroad Rights

11.3 Tenant acknowledges that it has been advised by Landlord that part of the Entire Premises is subject to an easement to the New York Central Railroad (now Consolidated Rail Corporation - The "Railroad") for the placement of railroad tracks and the passage of railroad equipment thereon ("the Railroad Easement Area") the property subject to such easement being specifically described in Paragraph E of Schedule A attached hereto.

Review of Project Plans and Specifications

11.4 With respect to any plans and specifications submitted by Tenant to the Landlord and by Landlord to the Design Review Subcommittee pursuant to the foregoing provisions of this Article XI, if the Landlord shall disapprove aspects thereof relating to

the design of the proposed construction for any reason, including conflict with the Guidelines contained in the Final Recommendations for Copley Square submitted by the Copley Square Citizens' Review Committee on September 22, 1977 referred to in Schedule C of this lease, but excluding reasons relating to the safety, maintenance, operation or repair of the Turnpike (as to which the Landlord shall reserve discretion, subject only to the provisions of Section 14.11) then Tenant may submit the matter of reasonableness and propriety of such disapproval to a board of review comprised of three architects duly licensed to practice in Massachusetts and members of the American Institute of Architects, one to be selected by Landlord, one to be selected by Tenant and one to be selected from its list of experts on architectural design by the Boston office of the American Arbitration Association, or its successor. If Tenant selects a member of the board of review and Landlord fails, within ten (10) days after the request of Tenant, to select a member, then the decision as to the reasonableness and propriety of such disapproval of Landlord shall be made solely by the member chosen by Tenant; otherwise, such decision will be made by a majority of said board. The decision of said board shall be final, conclusive and binding upon Landlord and Tenant. In making its determination such board shall be authorized to take into account the effect of the proposed design of such construction on the overall area affected thereby and on other related air rights construction, present or proposed, along the Turnpike; provided, that such board shall not substitute its

own particular design concepts in making a determination, but shall make such determination based upon whether the design proposed by Tenant is within the limits considered reasonable and acceptable by architectural theory and practice at the time of such submission; the purpose of such board being to avoid the possibility of unreasonable disapproval by or on behalf of Landlord in the future. If Landlord fails to approve or disapprove of any such plans or specifications within thirty (30) days after the submission or resubmission thereof to Landlord pursuant to this Section 11.4, such failure shall, for all purposes of this lease constitute approval by Landlord, provided that Tenant has used every reasonable effort to so submit or resubmit such plans and specifications in serial fashion so as to afford Landlord the opportunity to review, as soon as reasonably possible, each separate component of the proposed construction design.

Plans for Relocation of Ramps

11.5. With regard to its approval of plans relating to the safety, maintenance and operation of the Turnpike, the Authority has approved, in general, and has received the approval, in general, of its Consulting Engineers and Traffic Engineers of, a proposal for the demolition, relocation and reconstruction of the ramps leading from the eastbound roadway of the Boston Extension to Huntington Avenue and Dartmouth Street. An outline of this proposal, showing generally the traffic lanes and the location of relocated ramps, but not engineering data, prepared by PARSONS BRINCKERHOFF, QUADE & DOUGLAS, is attached to and made a part of

this Lease and marked Exhibit "C".

Tenant's Alterations, Additional Construction,
Removal and Replacement

11.6 Tenant may, at its option, make alterations or additions to buildings at any time constructed upon the Demised Portion, or undertake additional and further construction or the removal and replacement of structures thereon. Substantial structural and exterior alterations and additions to be commenced within the first fifteen (15) years of the lease term shall be subject to the requirements of Section 11.1, but thereafter Tenant shall be free to construct such alterations, additions and improvements as it sees fit subject only to the use restrictions of Section 6.12 hereof and to the following:

(i) complete plans, specifications and other details of such work to be performed over the Turnpike Area or within fifty (50) feet of the Turnpike Area shall be submitted at least ninety (90) days prior to the planned commencement of such work, or the award of any contract therefor, and thereafter such changes and revisions therein as Landlord (whose rights of review, revision and approval shall be limited to control of the proposed plans, specifications and construction procedures insofar as the carrying on of the work contemplated thereby might create risks to the safety of travel, or impede normal operations, on the Turnpike) may direct shall be promptly made and resubmitted to Landlord. No such work shall be undertaken until or unless Landlord shall have specifically approved the same. In

the event Landlord shall not approve the same the provisions of Section 8.4(iii) as to arbitration shall apply hereto. If and to the extent that such approval by Landlord is given or determined by Arbitration, such work shall thereafter be performed only in accordance with such approval, and in such manner, at such times, and subject to such supervision and control as Landlord may specify in granting such approval; and

(ii) Tenant shall also signify its compliance with all applicable requirements of Article VII as to insurance, and forward appropriate documentation as to new insurance coverage, if any.

The entire cost of any alterations shall be paid for by Tenant, and no liens for labor, material or any other reason shall be permitted to remain outstanding in connection therewith.

Effect of Approval of Plans and Specifications

11.7 No approval of plans and specifications by the Landlord under this lease shall limit or relieve the Tenant from full compliance with such obligations as it may have to cause such plans and specifications to be approved by the Building Department of the City of Boston, the Fire Department of the City of Boston, and any other appropriate authority having jurisdiction over construction of private buildings in the City of Boston, and by the Railroad.

Environmental Impact Matters

11.8 The entering into of this Lease by Landlord consti-

tutes the issuance of a permit by an authority of the Commonwealth of Massachusetts as defined in, and subject to the provisions of, Sections 61 and 62 of Chapter 30 of the General Laws relative to the determination of environmental impact. Although the acquisition by Tenant of its leasehold interest in the Demised Portion has already been approved by the Secretary of Environmental Affairs, as set forth in Exhibit D attached hereto and made a part hereof, Tenant's development of the Demised Portion as authorized in this Lease remains subject to completion of the procedures set forth in said Sections 61 and 62. Tenant shall diligently undertake any responsibilities applicable to Tenant in connection with said procedures, including without limitation the preparation, in accordance with applicable laws and regulations, and submission of a final environmental impact report with respect to which public notice of the draft report was given in the November 7, 1978 edition of The Environmental Monitor. Tenant shall be deemed entitled to undertake its development of the Demised Premises as aforesaid sixty (60) days after the Secretary of Environmental Affairs issues public notice in said Monitor of the availability of said final report, but no earlier than the making of a finding by Landlord, pursuant to said Section 61, and based on the evaluation required by said Section 62, that all feasible measures have been taken to avoid or minimize damage to the environment in connection with said development. In the event that Landlord shall not have made such finding by December 31, 1980, or in the event that an action or

proceeding (against which Tenant shall diligently defend) is brought alleging that said final report fails to comply with the requirements of said Section 62 and said allegation is finally sustained on appeal, then in either such event this Lease shall, subject to the provisions of Section 14.12(iii) hereof as to time extensions in certain circumstances, ipso facto terminated and become null and void without further legal or equitable recourse to either party, but without prejudice to any claim of either party relating to the period prior to such termination (including without limitation any claim by Landlord relating to Tenant's failure to have diligently acted as required by the foregoing provisions).

Loss of Revenue

11.9 (i) In the event of demolition, construction, major repair or renovation, the Tenant will reimburse Landlord for loss of revenue to Landlord attributable to such demolition, construction, major repair or renovation, in accordance with the following formula:

(ii) The amount of loss of revenue by the Landlord during the period of demolition, construction, major repair or renovation, shall be based on the total anticipated traffic and revenue at Interchanges 18, 19 and 20. Landlord will make separate projections of traffic and revenue for each of these interchanges through the period of construction, based on historical data in the possession of Landlord from March 1, 1976 to the start of construction, adjusted to reflect the schedule of tolls

from time to time in effect. Such projections shall also take cognizance of such events as legal and religious holidays, school openings, closing and vacations, and special events which affect traffic and revenue, and shall be subject to revision from time to time during the period of construction.

(iii) If during the period of demolition, construction, major repair or renovation, Landlord determines that there may be a loss of revenue attributable to Tenant, Landlord shall so notify the Tenant and shall request a determination from an independent traffic consultant mutually satisfactory to the parties of the cause and amount of such loss of revenue. In the event that the parties fail within thirty (30) days after Landlord's said notification to select the traffic consultant, either party may request the appointment of said consultant by the Executive Director of the International Bridge, Tunnel and Turnpike Association. The traffic consultant shall take into account such factors as weather, fuel shortages, and toll charges, and shall inform Landlord of the amount of loss of revenue reasonably attributable to such demolition, construction, major repair or renovation.

(iv) Taking into account this information, Landlord will notify Tenant of the amount of loss of revenue reasonably attributable to such demolition, construction, major repair or renovation, such amount to include the amount certified by such traffic consultant, the amount of income, if any, lost on account of reserve funds required to be used for current financial obli-

gations and the cost of the report of such traffic consultant, and Tenant will reimburse Landlord for such amount, as additional rent. All information regarding loss of revenue attributable to Tenant shall be available to the Tenant upon its request.

ARTICLE XII -- SUBORDINATION; RIGHTS OF
MORTGAGEES; DIVISION OF LEASE

Subordination

12.1 Landlord's interest in this Lease is and shall be expressly subordinate to the rights and lien of any Mortgagee, including the rights of such Mortgagee upon foreclosure of such mortgage or exercise of such Mortgagee's rights pursuant to any assignment of this Lease as further security, provided only that any such Mortgagee shall expressly undertake and assume at the time of its exercise of such rights or its foreclosure of such mortgage, all of the obligations of Tenant hereunder except the obligation for payment of the rent provided for in Section 3.1, to which obligation neither such Mortgagee nor its interest in this Lease or the Demised Portion shall be subject. Nothing contained in this Section 12.1 or elsewhere in this Lease shall be construed to give any such Mortgagee any rights whatsoever in the Security Deposit referred to in Section IV of Schedule B hereto (except after and to the extent that distributions therefrom are actually paid to Tenant), nor diminish the amounts payable to the Landlord by the Escrow Agent out of such Security Deposit.

Rights of Mortgagees

12.2 Upon and following receipt by Landlord of written

notice of the recording of a Mortgage and the address of the Mortgagee, and thereafter while such Mortgage is outstanding, whether held by the original Mortgagee thereunder or its successors or assignees and whether given in substitution or replacement for or subsequent to any other mortgage, Landlord agrees as follows:

(i) Landlord shall give to any Mortgagee a copy of any default notice given to Tenant under Section 13.1, and shall accept performance by such Mortgagee of any covenant, agreement or obligation of Tenant contained in this lease with the same force and effect as though performed by Tenant.

(ii) Landlord shall not accept a voluntary surrender of this Lease, nor shall Landlord further amend this lease without in each instance receiving the specific written approval of any Mortgagee.

(iii) Landlord shall from time to time provide to any Mortgagee promptly upon written request an estoppel certificate setting forth the existence or non-existence of known defaults under this lease and any other matters germane to this lease or its financing which may reasonably be requested by such Mortgagee.

(iv) The provisions of this Section 12.2 are for the benefit of any Mortgagee and may be relied upon and shall be enforceable by any Mortgagee. Neither any Mortgagee nor any other holder or owner of the indebtedness secured by any mortgage shall be liable upon the covenants, agreements or obligations of Tenant contained in this lease, unless and until the Mortgagee, holder or owner becomes Tenant hereunder.

Division of Lease

12.3 At any time before or after substantial completion of the improvements contemplated hereby (as evidenced by an architect's certificate of substantial completion) upon the written request of Tenant the parties shall prepare and re-execute two or more leases on terms substantially identical to the written lease, but subdividing the Demised Portion along the planes which are the center line of any walls, ceilings, floors or other dividers or spaces which separate the discrete portions of the Demised Portion which are to be separately leased. The rent to be set forth in each such lease shall be that percentage of the rent set forth herein as shall be agreed upon by the parties or determined by appraisal as set forth in Section 14.14 hereof but in no event shall the aggregate rent under all such leases exceed the rent set forth herein. The previous Governor, by his assent hereto, has agreed that no subsequent gubernatorial approval is or shall be required in view of the fact that no material amendment of this lease will be thereby effected, and the present Governor agrees in like fashion. The parties agree, simultaneously with the execution of such subsequent leases, to enter into all cross-easements pertaining to parking, utilities, common areas, access and maintenance and other interrelationships as may be necessary or appropriate at such time and for the balance of the Term to preserve the efficient operation of the Demised Portion as a whole in the event of any subsequent severance of ownership of the parcels. It is understood and agreed that such

subdivided leases may be separately mortgaged, that subleases and other rights pertaining to each may be separately assigned, and that no provisions of cross default shall be incorporated in any lease, it being intended that a foreclosure of any portion by any Mortgagee, or the sale or other conveyance of any portion to any transferee permitted hereby and by all other applicable documentation shall effect a complete severance of the leases and permit the ownership and operation of any portion as an independent whole.

ARTICLE XIII -- DEFAULT

Default, Notices

13.1 If any material default by Tenant continues after notice, (i) in case of any payment of money for more than twenty (20) days after written notice from Landlord to Tenant of such default or (ii) in any other case for more than sixty (60) days after written notice from Landlord to Tenant of such default and such additional time, if any, as is reasonably necessary to cure the default, Landlord shall have the right (subject to the rights of Mortgagees as provided in Article XII) to bring appropriate legal proceedings for the enforcement of its rights hereunder, but Landlord's rights shall in no event include the right to evict Tenant from the Demised Portion. If Landlord shall obtain a final order of any court of competent jurisdiction, granting the relief requested, Landlord shall specifically be entitled to damages in the amount of reasonable attorneys' fees incurred by Landlord in obtaining such order.

ARTICLE XIV -- OTHER PROVISIONS

Separability of Provisions

14.1 If any of the terms, provisions or conditions of this lease, including the Schedules thereto, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this lease and the application of such term, provision or condition to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each of the other terms, provisions and conditions of this lease shall be valid and enforceable to the fullest extent permitted by law.

Mutual Acknowledgement of any Termination

14.2 If this Lease is terminated before the term expires, the parties shall execute, deliver and record an instrument acknowledging such fact and the date of termination of this Lease.

Titles Not Definitive

14.3 The Table of Contents and headings and titles of Articles, Sections and Schedules are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope or intent of this lease, nor in any way affect it.

Giving of Notices

14.4 Every notice, demand and approval required or permitted to be given under this lease shall be in writing and deemed to have been duly given only when mailed by certified or regis-

tered mail, with return receipt requested, addressed in the case of notice to or demand upon LANDLORD to it at:

Suite 3000, Prudential Center
Boston, Massachusetts 02199

and in the case of notice to or demand upon TENANT to it at:

Suite 4500 John Hancock Office Building
200 Clarendon Street
Boston, Mass 02166
With a copy to: Law Department
Urban Investment and Development Co.
845 N. Michigan Ave., Suite 800
Chicago, ILL 60611

or in the case of either party to such other address as that party shall from time to time have designated by written notice given to the other party, as herein provided.

Notice of Lease

14.5 The parties shall execute a notice of lease in form which may be recorded or registered or both, in accordance with the provisions of General Laws, c. 183, Section 4.

Permitted Contests

14.6 The Tenant shall not be required to (i) pay any tax or other sums referred to in Sections 3.2 and 6.19 or, (ii) comply with any law, rule, order, regulation, by-laws or ordinance, or remove any lien, referred to herein, so long as the Tenant shall contest, in good faith and at its own expense, the existence, the amount or the validity thereof, the amount of the damages caused thereby, or the extent of its liability therefor, by appropriate proceedings which shall operate during the pendency thereof to prevent (i) the collection of, or other realization upon, the tax, sum or lien so contested, (ii) the sale, forfeiture or loss

of the Demised Portion, or any part thereof, or the rentals or any additional rent, or any portion thereof, to satisfy the same or to pay any damages caused by the violation of any such law, rule, order, regulation, by-law or ordinance, (iii) any interference with the use and occupancy of the Demised Portion or any part thereof, or (iv) any interference with the payment of the rentals of any additional rent, or any portion thereof. While any such proceedings are pending, Landlord shall not have the right to pay, remove, or cause to be discharged, the tax, sum or lien thereby being contested. Tenant further agrees that each such contest shall be promptly prosecuted to a final conclusion, that it will pay, and save Landlord harmless against, any and all losses, judgments, decrees and costs (including all reasonable attorney's fees and expenses in connection therewith) and that it will, promptly after the final determination of such contest, fully pay and discharge the amounts which shall be levied, assessed, charged or imposed or be determined to be payable therein, together with all penalties, fines, interests, costs and expenses thereon or in connection therewith, and perform all acts, the performance of which shall be ordered or decreed as a result thereof.

Quiet Enjoyment

14.7 Notwithstanding any other provisions of this lease, if and so long as the Tenant shall observe and perform all covenants, agreements and obligations required by Tenant to be observed and performed hereunder, Landlord shall not interfere with

the peaceful and quiet occupation and enjoyment of the Demised Portion by the Tenant.

All Agreements Included

14.8 This instrument and the attached Schedules and Exhibits contain all the agreements made between the parties hereto, is binding upon and shall enure to the benefit of their respective successors and assigns, and may not be modified in any other manner than by an instrument in writing executed by the parties or their respective successors in interest.

Landlord's Rights Cumulative

14.9 Except as limited in Articles XII and XIII, all the rights and remedies of Landlord herein mentioned or referred to or arising hereunder shall be deemed to be distinct, separate and cumulative, and no one or more of them, whether exercised or not, nor any mention of them herein shall be deemed to be in exclusion of, or a waiver of, any of the others, or of any rights or remedies which Landlord might have whether by present or future law or pursuant to this Lease, and Landlord shall have, to the fullest extent permitted by law, the right to enforce any rights or remedies separately, and to take any lawful action or proceedings to exercise or enforce any rights or remedies whether at law or in equity or otherwise, without thereby waiving, or being thereby barred or estopped from exercising and enforcing any other rights or remedies by appropriate action or proceedings.

No Waiver by Landlord

14.10 No waiver by Landlord of any breach by Tenant of any covenant agreement or condition herein contained and no failure

by Landlord to make any payments on behalf of Tenant or to exercise any right or remedy in respect of any breach hereunder, shall constitute a waiver or relinquishment for the future of any such covenant, agreement or condition or of any subsequent breach of any such covenant, agreement or condition, or bar any right or remedy of Landlord in respect of any such subsequent breach, and the receipt of any rent by Landlord whether the same be that reserved and provided for herein as net rent or that which may be or become payable as additional rent or other sum or sums of money or charges under any of the covenants, agreements or provisions herein contained or any portion thereof, shall not operate as a waiver of the rights of the Landlord to enforce the payment of any other such rent or to require the performance of any other covenant, condition or agreement hereof then or thereafter in default, or to invoke any other appropriate remedy which Landlord may select as herein or by law provided, except as such remedy may be limited or restricted hereby.

Approvals

14.11 Any requested action, approval or finding hereunder shall not be unreasonably delayed or withheld, or both, whether or not this Section 14.11 is specifically referred to.

Certain Extensions of Time

14.12 (i) The Rent Increase Date, (ii) the final date on which Tenant has the right to give notice of cancellation of this lease and (iii) the effective date of cancellation pursuant to such notice, shall each be extended for periods of time as specified below on account of any of the following matters:

- (i) Landlord's delay beyond the time specified herein, if any, or otherwise, beyond a reasonable time in approving Tenant's plans and specifications or in furnishing other approvals requested under this lease, including approval of Tenant's final plans and specifications under Section 11.1; for the period of such delay or the time reasonably required by Tenant to revise its plans and specifications to meet Landlord's objections, respectively;
- (ii) Landlord's failure to approve the design of the proposed construction for any reason not related to the safety, maintenance, operation or repair of the Turnpike and the consequent submission to a board of review as provided herein; in Section 11.4; for a period of time equal to the period from the date of submission to such board to the date of its decision; or
- (iii) Litigation arising out of claims based on Landlord's or Tenant's failure to comply with applicable laws, including Sections 61 and 62 of Chapter 30 of the General Laws, including claims with respect to Landlord's execution and approval of this lease and claims based on Landlord's subsequent finding under Section 11.8; for a period of time equal to the period from the date of the notice to the parties that suit has been filed to that date on which the court having jurisdiction over such suit has rendered its final decision and all applicable appeal periods have expired without

any appeal having been instituted or any such appeals have been determined favorably to the Tenant or Landlord, or both if both are involved;

In the event that any matters specified in clauses (i), (ii) and (iii) above, shall occur during the same period of time or a portion of the same period of time as any other of such matters, the number of days during which any such overlap occurs shall only be computed once in determining the applicable extension period.

Certain Governmental Assistance

14.13. Government financial assistance in the form of an Urban Development Action Grant, the allocation of funds pursuant to the Federal Urban Systems program for improvement of urban streets and ways not part of the Federal Highway System, and such other city, state or federal aid as may be available from time to time, is important to the Tenant in ensuring success of the Development. Accordingly, Landlord will use its best efforts to assist in procuring the allocation to the Development and its surroundings, of the maximum possible Government financial assistance, and will support the Tenant in its effort to secure such assistance.

Appraisal under Section 12.3

14.14 Reference is made to Section 12.3 of this Lease relative to the re-execution of two or more leases and the allocation of rent as between or among the discrete portions of the Demised Portion. In the event that, the parties cannot agree to said percentage allocation, the same shall be determined by appraisal.

Landlord and Tenant shall each promptly designate an appraiser by written notice to the other two appraisers thus named shall promptly name a third appraiser. If the two appraisers so appointed shall not have agreed upon a third appraiser within thirty (30) days after the second appraiser is appointed, either Landlord or Tenant may request the then Chief Justice of the Superior Division of the Trial Court of the Commonwealth of Massachusetts (or, if said Justice declines to act, the then President of the Greater Boston Real Estate Board or the successor of such Board) to appoint the third appraiser. The three appraisers thus selected shall promptly proceed to determine said percentage allocation on a fair and equitable basis, such determination to be based on the relative fair ground rental value of the Demised Portion and the balance of the Demised Portion, taking into account the use to be made of the Demised Portion upon completion of the contemplated improvements. The appraisers shall make such a determination and award by majority of their number, and shall report their determination in writing to Landlord and to Tenant. The award of a majority of the appraisers shall be binding upon both parties. The parties agree to provide appropriate relevant information and otherwise to assist the appraisers in arriving at a prompt determination. The expenses of the appraisal shall be shared equally between Landlord and Tenant, but each party shall pay its own counsel fees. The determination of said percentage allocation made by the appraisers hereunder shall be incorporated into the re-executed leases and shall be in accordance with the provisions thereof.

IN WITNESS WHEREOF, Landlord and Tenant have caused this lease to be executed by their duly authorized officers and their respective corporate seals to be hereto affixed as of the day and year first above written.

MASSACHUSETTS TURNPIKE AUTHORITY

Amended and Restated Lease
approved:

By: _____
John T. Driscoll, Chairman

Edward J. King, Governor of the
Commonwealth of Massachusetts

Albert P. Manzi, Vice-Chairman

David R. Nagle, Member

Approved as to Form:

Approved:

Counsel for Massachusetts
Turnpike Authority

Consulting Engineers for
Massachusetts Turnpike
Authority

URBAN INVESTMENT AND DEVELOPMENT CO.

By: _____
Thomas J. Klutznick,
Chairman

SCHEDULE A

PARAGRAPH A - ENTIRE PREMISES

The Entire Premises refers to the certain premises more particularly bounded and described and shown on Exhibit "A" attached hereto and made a part hereof, entitled "Plan of Air Rights in Boston, Mass." (2 sheets).

PARAGRAPH B - DEMISED PORTION

The Demised Portion refers to those parts of the Entire Premises above and below the elevations based on datum 100 feet above the United States Coast and Geodetic Survey, Mean Sea Level of 1929 depicted on a cross-section plan attached hereto as Exhibit "B" and made a part hereof, entitled "Cross Section Plan of Air Rights in Boston, Mass." and on further plans to be prepared by Tenant, subject to the approval of Landlord.

Demised Portion also includes the area of easement over Stuart Street, Harcourt Street and Huntington Avenue as referred to in Paragraph F of this Schedule A.

As used in the Lease to which this Schedule A is attached, reference to portions of the Demised Portion adjacent to the Turnpike Area shall be construed with due regard not only to geographic proximity but also to Landlord's duty to provide for safe, continuous and uninterrupted operation of the Boston Extension of the Massachusetts Turnpike.

PARAGRAPH C - EXCEPTED PORTION

The Excepted Portion shall refer to all parts of the Entire Premises not specifically included in the Demised Portion here-

inbefore described in Paragraph B and as shown on the cross-section plan referred to in Paragraph B above.

PARAGRAPH D - TURNPIKE AREA

The Turnpike Area shall refer to the travelled roadways and ramps of the Massachusetts Turnpike as the same may be relocated pursuant hereto.

PARAGRAPH E - RAILROAD EASEMENT AREA AND CITY OF BOSTON EASEMENT AREA

The Railroad Easement Area sometimes herein referred to as the Railroad Easement shall refer to that part of the Entire Premises which was included in a certain easement from the Massachusetts Turnpike Authority to the New York Central Railroad Company (now Consolidated Rail Corporation) dated December 27, 1962 and recorded in the Suffolk Registry of Deeds in Book 7710 Page 182.

The City of Boston Easement Area, which is for water line purposes, shall refer to that part of the Entire Premises which was included in two easements from the Massachusetts Turnpike Authority to the City of Boston dated November 11, 1971 and recorded in the Suffolk Registry of Deeds in Book 8498, Page 182 and in Book 8498, Page 185.

The Railroad Easement Area and the City of Boston Easement Area are those areas shown on Exhibit "A" as the "Railroad Easement" and the "Water Easement" respectively.

PARAGRAPH F - TENANT'S ADJOINING PROPERTY

The Tenant does not own Adjoining Property. However, easement rights over Stuart Street and Harcourt Street will be neces-

sary for the Development, and rights over Huntington Avenue may be acquired. If the Tenant acquires such easement rights, it will convey the same to the Authority and the same will be made part of the Demised Portion. If the Authority acquires such easement rights, the same will be made part of the Demised Portion.

PARAGRAPH G - ADDITIONAL AREAS

Notwithstanding the descriptions contained above, it is understood that, in connection with the construction and use of the Development, certain of the streets and boundary lines and the Turnpike Area described in the preceding Paragraphs A through F above and Exhibits A and B will be relocated and/or discontinued as shown on a plan drawn by Parsons, Brinckerhoff, Quade & Douglas Consulting Engineers, and attached hereto as Exhibit C. It is contemplated that (i) the City of Boston will convey to the Authority the areas located approximately as designated with shading on such plan for such uses and (ii) the Authority will convey to the City of Boston the areas located approximately as designated with squares on such plan for the relocation of Stuart Street and the intersection of Huntington Avenue and Dartmouth Street. The Authority and the Tenant will use their best and most diligent efforts to consummate simultaneously the transfers contemplated by clauses (i) and (ii) above and to take all actions necessary to add the areas referred to in (i) above to the Demised Portion and to eliminate from the Demised Portion the areas referred to in (ii) above. When such transfers are consum-

mated, the areas referred to in (i) above will, as after acquired property, become part of the Demised Portion, and be incorporated in the definition thereof contained in Paragraph B, and the Tenant and the Authority will release and grant to the City of Boston the areas referred to in (ii) above. The Authority will, if necessary in order to expedite this process, use its powers of eminent domain or any other of its powers, as appropriate and to the extent permitted by law, to achieve such purposes.

SCHEDULE B

As used in this Schedule, the following terms shall have the following meanings: (i) the "Rent Commencement Date" shall mean December 15, 1978, (ii) the "Rent Increase Date" shall mean the "Commencement of Construction Date" or January 1, 1981, whichever is earlier, unless extended as herein provided, (iii) the "Commencement of Construction Date" shall mean the date upon which the Tenant will have first entered upon the Demised Portion for the purpose of constructing any of the improvements to be constructed pursuant to the provisions of Article XI or, if earlier, the date upon which the Tenant will have first entered upon the Demised Portion for the purpose of commencing demolition of any improvement or structure now existing thereon pursuant to authority so to demolish given in accordance with the provisions of this lease and shall have moved heavy construction equipment (excluding machinery for boring or other testing equipment) on the site for either of the foregoing purposes, and (iv) "Escrow Agent" shall mean The First National Bank of Boston, a Bank incorporated under the laws of the United States of America having its principal place of business in Boston and authorized to accept and carry out Escrows of the sort herein provided, or its successor agent hereunder.

I. RENT FROM THE RENT COMMENCEMENT DATE UNTIL RENT INCREASE DATE

- A. Upon the execution of this lease, the Tenant has paid the Landlord the sum of \$2,750, and the Landlord acknowledges receipt thereof, as rent for the period from the Rent Commencement Date through December 31, 1978.

- B. Commencing January 1, 1979 and continuing on the first day of each month thereafter through December 1, 1979, the Tenant will pay the Landlord rent at an annual rate of \$66,000, payable in equal monthly installments in advance of \$5,500.
- C. On January 1, 1980 the Tenant will pay to the Landlord rent in the amount of One Dollar (\$1.00) for the period from January 1, 1980 through the day preceding the Rent Increase Date.

II. RENT FROM THE RENT INCREASE DATE THROUGH
DECEMBER 14, 2077

- A. For the period beginning with the Rent Increase Date and ending March 31, 1981, the Tenant shall pay rent at the annual rate of \$1,200,000, payable in equal monthly installments of \$100,000 in advance, prorated with respect to any month in which the Rent Increase Date falls.
- B. For the period beginning with April 1, 1981 and ending August 15, 1981, the Tenant shall pay rent in the amount of \$450,000, payable on August 15, 1981 in arrears.
- C. On the fifteenth day of February, 1982, the fifteenth day of August, 1982 and on the fifteenth day of each succeeding February and August, through February 15, 2002, the Tenant shall pay to the Landlord the sum of \$600,000, being one-half the annual rent of \$1,200,000, payable semi-annually in arrears, except as otherwise provided in Section IV C of this Schedule B.

- D. In addition, on February 15, 2002, the Escrow Agent shall deliver to the Landlord all of the bonds and interest therefor (unless Landlord will have earlier received such bonds and interest pursuant to the provisions of Section IV of this Schedule B) then held by it on account of rent for the period from February 15, 2002 through December 14, 2077.
- E. On January 1, 2003 and the first day of each January thereafter through January 1, 2077, the Tenant shall pay to the Landlord One Dollar (\$1.00) in full payment of the balance of the rent for the period from February 15, 2002 through December 14, 2077.

III. TENANT'S RIGHT OF CANCELLATION

Tenant may cancel this lease effective no later than March 31, 1981 if (i) Tenant will have given notice of its desire to exercise such right of cancellation by mailing such notice to Landlord and to the Escrow Agent pursuant to the provisions of Section 14.4 of this lease, no later than February 28, 1981 and (ii) the Commencement of Construction Date has not occurred prior to the date such notice is given. If such two conditions have been met, this lease will terminate on the last day of the calendar month next following the giving of such notice, and the parties will have no further rights or obligations hereunder thereafter, except as provided in Paragraph E of Section IV of this

Schedule B. The dates set forth herein are subject to extension under certain circumstances described in Section 14.12 of the lease.

IV. SECURITY DEPOSIT

- A. At any time and from time to time hereafter, but in any event not later than the "Commencement of Construction Date" or April 1, 1981, whichever is earlier, the Tenant shall acquire and deposit with the Escrow Agent United States Treasury Bonds 7-5/8% due February 15, 2007, callable not earlier than February 15, 2002, paying interest at an annual rate of not less than \$1,200,000, and having a total par value at maturity of not less than \$15,800,000, to secure performance of its obligations hereunder.
- B. The Escrow Agent shall receive and hold such bonds and apply the interest thereon and the principal thereof as follows:
The Escrow Agent shall:

(i) from the interest received thereon pay to Landlord \$450,000 on the fifteenth day of August, 1981, and thereafter \$600,000 on the fifteenth day of each February and August after August 15, 1981 through February 15, 2002 on account of the Tenant's rent obligations as set forth in Section II C of this Schedule B, except as otherwise provided in Section IV B(iii), IV C and IV D of this Schedule B.

(ii) pay to the Tenant any interest thereon received by it in excess of the total of the amounts payable by it to Landlord pursuant to the foregoing clause (i) and payable to itself for services under subparagraph F below, such payment to be made on each February 15 and August 15, commencing after delivery of such bonds and ending February 15, 2002.

(iii) upon maturity of such bonds, or upon its earlier receipt of the notice provided for in Paragraph IV C of this Schedule B, deliver such bonds in kind (or the proceeds thereof at maturity), with all interest thereon not otherwise paid or payable pursuant to (i) and (ii) above and Paragraph E below, to the Landlord.

C. At any time after the deposit of such bonds with the Escrow Agent, the Landlord may, by written notice to the Escrow Agent, approved by the Governor, demand and receive from the Escrow Agent all of such bonds then received and held by it as Escrow Agent hereunder, together with any interest thereon then held by the Escrow Agent and not otherwise distributed pursuant to B(i), (ii), or Paragraph E hereof. Upon the delivery of such bonds and interest pursuant to this Schedule B, all rent otherwise payable hereunder shall be forgiven and the rent payable hereunder shall be reduced to rent at the rate of \$1.00 per year, payable in arrears on the first day of each January thereafter for the remainder of the term hereof, with a pro rata adjustment to be made with respect to the then current year to eliminate any double payment of rent or interest, or double receipt thereof, by either party.

- D. If this lease shall expire or be terminated for any reason before its agreed expiration date (other than in accordance with Section III of this Schedule B), the Escrow Agent will deliver to the Landlord all of such bonds then held by it together with any interest thereon remaining undistributed.
- E. If the Tenant shall exercise its Right of Cancellation, as provided in Section III of this Schedule B, the Escrow Agent shall distribute to Tenant the bonds and interest then remaining undistributed, if any, then held by it as Escrow Agent.
- F. For its services hereunder the Escrow Agent will be entitled to a fee at the annual rate of \$2,000 payable semi-annually in arrears which it may deduct from interest received by it. Upon termination of the escrow the Escrow Agent will be entitled to an additional termination fee of \$10,000. It may deduct this amount from interest received by it or from the proceeds of payment or sale of such bonds then held by it or the Escrow Agent may require that such fee be paid to it by the party to whom the bonds held by it in escrow are to be delivered as a condition precedent to its delivery to such party of such bonds.
- G. If the original or any successor Escrow Agent shall fail or cease to serve as such, the Landlord shall appoint a successor Escrow Agent, subject to the reasonable approval by the Tenant. The Assets held by the former Escrow Agent shall be delivered to its successor, which shall assume all of the rights and duties of its predecessor. Upon such delivery

such successor shall deliver such receipts and such instruments setting forth its assumption of said agreement to carry out the obligations of the Escrow Agent hereunder as may reasonably be required by the predecessor Escrow Agent, the Landlord, the Tenant or any one or more of them.

SCHEDULE C

CONSTRUCTION AGREEMENT TO BE ATTACHED TO THE LEASE INDENTURE BETWEEN MASSACHUSETTS TURNPIKE AUTHORITY AND URBAN INVESTMENT & DEVELOPMENT CORPORATION DATED AS OF DECEMBER 22, 1978 AND BEING THE CONSTRUCTION AGREEMENT REFERRED TO IN SECTION 11.1 OF SAID LEASE INDENTURE.

Tenant agrees to construct buildings and structures on the Demised Premises or which extend into or over the Demised Premises in accordance with the following construction requirements. It is of primary importance that the regulations of the Landlord be observed so as to minimize any interruption of the operation of the Turnpike, and this Agreement will be construed so as to minimize such interruption.

CONSTRUCTION PROVISIONS

Prosecution of Work, Safety and Protection of Traffic

Construction operations shall be planned and conducted so as to cause a minimum interference with traffic, and the Massachusetts Turnpike within the work area shall be kept open for three lanes of uninterrupted traffic in each direction at all times except for temporary suspensions for short periods of time or as hereinafter specified.

Two adjacent travel lanes of a minimum width of 26 feet of roadway shall be maintained available for traffic at all times

during working hours, except during brief periods when a detour is in operation during the hours from 11 P.M. to 5 A.M. or when the Landlord may approve the restriction of traffic to a single lane during the hours from 11 P.M. to 5 A.M.

Work, including set-up of traffic control devices and detours, will not be allowed on the eastbound roadway before 9:30 a.m. There will be no restriction on any day as to the quitting time in the afternoon except it must be during daylight hours (up to one (1) hours before sunset).

Work will not be allowed on the westbound roadway after 3:00 p.m. on Monday through Friday. There will be no restriction any day as to the starting time in the morning except it must be during daylight hours. The 3:00 p.m. restriction requires that the tenant will have to plan his work so that all equipment will be off the westbound roadway at 3:30 p.m.

All equipment will have to be off the eastbound roadway at quitting time, unless otherwise agreed to. Night work will be permitted on the Turnpike between the hours of 11 P.M. to 5 A.M. when the tenant may occupy up to three lanes of traffic. (no more than two in any one direction.)

One lane on a ramp shall be available for traffic use at all times, except on the two lane section of Ramp B where two lanes shall be available from 7 A.M. to 9:30 A.M. Ramps B and C may be shut down upon completion of an approved temporary ramp providing access to Stuart Street via a structure over the main line of the Turnpike. Shutdown of ramps for structural steel erection overhead may be effected, but only between 11 P.M. and 5 A.M. for

the shortest feasible period. Shutdown of ramps during such periods as traffic is being rerouted from permanent ramps to temporary ramps and vice versa shall be permitted on weekends with the prior approval of the Chief Turnpike Engineer.

When in the opinion of the Tenant and the Landlord a piece of heavy equipment is too cumbersome to move on and off the roadway daily, the heavy equipment may, with the approval of the Landlord, remain on the necessary portion of the roadway or roadways providing full use is made of the median area or any abutting area adjacent to the roadway, and that the minimum number of lanes are made available as specified above.

Foundation work requiring parking equipment in the median or any other work requiring overnight restriction of the normal Turnpike roadways will not be permitted during the winter period from December 1st to April 1st, except with the prior approval of the Chief Turnpike Engineer.

Workmen entering the paved roadway areas shall wear suitable safety vests. Workmen who disregard safety regulations will be barred from the job site.

Any restriping of the roadways that may be required will be done by the Landlord.

All work, equipment, workmen and materials shall be confined to the area between safety barriers. Plans for the safety barriers will be submitted to the Landlord for approval.

Vehicles shall not stop on the Turnpike for any purpose except within the areas and at the times as permitted.

Vehicles using the Turnpike shall move with the traffic, and no cross movements, reverse movements or U-Turns will be permitted.

Workmen shall not enter or cross an operating Turnpike lane except under the protection and direction of a State Police Officer. This shall be kept to an absolute minimum.

During the construction period of foundation work, extreme care shall be exercised to prevent mud, water, concrete or any extraneous material from spilling onto the travelled way or passing vehicles or entering the drainage system of the Landlord.

During the operation of lifting and placing in their final position the concrete or steel beams which form the lowest working platform, the Turnpike may be closed to traffic in one direction east of Huntington Avenue. When the eastbound roadway is required to be closed to traffic, eastbound traffic will be allowed to exit by Ramp B or temporary ramps. When the westbound roadway is required to be closed to traffic, westbound traffic will be diverted onto the eastbound roadway through existing crossovers. This work and this westbound closing will only be between the hours of 12 midnight and 5:00 a.m. and shall be in accordance with a schedule previously approved by the Landlord to the end that the work will be carried out in the least number of nights.

After any of the beams is in place, if any work is to be carried out on the top of the beams while traffic passes underneath, safety nets and/or shielding of a design approved by the

Landlord shall be strung at each end of the erected beam section over the Turnpike, with vertical clearances over the Turnpike of not less than 14 feet 3 inches. Nets and shielding shall be continued in use until the appropriate portion of the structure is completed.

During the periods of construction adjacent to or abutting the main line or ramps, the travel lane adjacent to the construction area will be coned off as a safety measure.

Barricades and Warning Signs

The Tenant will furnish, install, remove, reinstall and maintain, at its expense, warning signs, cones and portable barricades with battery operated flashers as the Landlord may direct or approve to meet site conditions, control and direction of traffic and promote safety and convenience. Warning signs, barricades, flashing lights and other protective devices shall be constructed and erected in accordance with the standard traffic protection detail sheets (three pages, marked C-1, C-2 and C-3, respectively) attached to and made part of this Construction Agreement, except in special cases where the Landlord may require more signs or revise the arrangements. In the absence of specific plans or instructions, such devices shall conform to those outlined in the latest edition of the "Manual on Uniform Traffic Control Devices for Streets and Highways" - Part VI, prepared by the National Joint Committee on Uniform Control Devices, and approved by the Landlord.

The Tenant shall install, erect, relocate, remove, reinstall and maintain the signs, cones and barricades required throughout

the period they are needed. Signs, cones, barricades and flashers that are missing, damaged or destroyed for any reason whatsoever will be repaired or replaced as soon as possible.

Prior to starting work on any portion of the project adjacent to or being used by the travelling public, the Tenant shall furnish or have available on the project or in its maintenance areas the signs, cones and other devices as required by the special detail sheets.

Whenever temporary supports are to remain in the Turnpike during non-working periods, the Tenant shall provide and maintain signs, flashers and adequate and substantial energy absorbing devices to protect the traffic during the entire period the temporary supports are in place, as directed and approved by the Landlord.

Authority and Duties of Landlord's Assistants

The Landlord may assign such assistants and representatives, generally referred to as Inspectors, as it reasonably deems necessary at the expense of the Tenant and they shall be authorized to give directions with regard to the safety and convenience of the Turnpike traffic or of the public, the erection and maintenance of traffic protection devices, barricades and warning signs, and related matters.

Inspectors are not authorized to revoke, alter, enlarge, relax or release any requirements of this construction agreement. They shall in no way act as foremen or perform other duties for the Tenant.

Control of Traffic

The Landlord will furnish uniformed State Police to direct and expedite traffic and to safeguard those using the Turnpike. The Tenant shall reimburse the Landlord, at current rates, for detached duty plus the cost of overhead.

Police officers are charged with enforcing all safety regulations and will give priority to the safe and continuous operation of the Turnpike and the traffic thereon. They will direct and control the traffic within the site of the work and the movements of the Tenant's workmen and equipment shall be subject to their direction at all times. The Tenant's compliance is required.

The Tenant shall provide, at its expense, police officers as required by the local authorities on local streets.

The Tenant shall make direct arrangement with the Railroad for protection of railroad traffic. The cost of such protection will be borne by the Tenant.

The Tenant shall make specific arrangements with the Landlord for entry upon and use of the Turnpike for oversized vehicles coming within the provisions of Article IV, Section I of the Rules and Regulations.

Schedule of Operations

At least five days prior to the time the Tenant intends to start any operations affecting the Turnpike or any of its facilities, and from time to time thereafter as directed by the Landlord, the Tenant shall submit to the Landlord, for its approval,

complete shop drawings and a work schedule showing the method and sequence of operation for demolition, foundations, concrete work and erection of structural members. Complete details of any proposed bracing and shoring which it intends to provide shall also be submitted for the approval of the Landlord.

In addition to the schedule as required hereinbefore, the Tenant shall submit, not later than 12 Noon on Thursday, a detailed plan of its operations for the following week. This plan shall show the kind of work to be done and the traffic lanes which are to be affected, for each and every day of the week in which work is to be performed. The Landlord may revise the schedule, if necessary, and all work will be performed in strict compliance with the approved schedule. Should weather or other conditions beyond the control of the Tenant render the schedule impractical, a revised schedule will be submitted for approval.

Prosecution of Work

Newly erected beams or stringers with diaphragms over roadways, including ramps, shall be adequately secured by making 75 percent of the connections immediately after erection and before traffic flow resumes.

All structural members shall be adequately connected and secured prior to leaving the site at the end of the workday.

When necessary, the Tenant, at its cost and expense, will remove lighting standards, including necessary electrical work. The standards, luminaires, etc. removed will remain the property of the Landlord and shall be transported by the Tenant to the

Turnpike Maintenance Area at Weston. With the removal of or putting out of service of any light standard, temporary lighting for the Turnpike shall be provided by the Tenant. The temporary lighting for the Turnpike will be extended, when necessary, and will remain in service until the new permanent lighting system for the Turnpike is installed and in service. The design for the temporary lighting will be submitted to the Landlord for his approval.

In order to provide for safe and comfortable travel on the Turnpike Area over which Tenant at any time constructs a covering structure, when necessary, the Tenant shall install, operate and maintain at Tenant's cost and expense a temporary ventilating system until the permanent ventilating system for the Turnpike Area is installed and in service.

Where existing portions of the Turnpike ramp roadways and structures are approved by the Landlord to be removed by the Tenant, the drainage inlets, frames, covers, and grates; signs and supports; bridge railing; and curbing shall remain the property of the Landlord and shall be transported by the Tenant to the Turnpike Maintenance Area in Weston. Any items that are existing on the site and that can be incorporated into the Tenant's construction work on the site, may be removed and reused at the Tenant's option.

Temporary Suspension of Work

The right is reserved to suspend construction on any day or at any time when, in the opinion of the Landlord, the volume of

traffic or the weather conditions are such that inordinate delays in traffic movement might result from the construction of the traffic movement.

Maintaining Water Table

Prior to the start of construction and at regular periods, as designated by the Landlord, during construction of the project, the Tenant will check the water level in the vicinity of the project and at other nearby locations in the Back Bay. If the water level in the vicinity of the project or at other nearby locations in the Back Bay appears to be adversely affected by conditions or practices resulting from the construction of the project, Tenant will make special efforts to restore and maintain a proper level in these areas. Tenant may use existing observation wells or additional observation well locations, as approved in advance by the Landlord, in making regular periodic checks of the water level. Tenant will indemnify and save the Landlord harmless from any damages or consequential damages resulting from changes in the water table affecting either the Landlord or others in the vicinity and attributable to the construction of the project by the Tenant, or any agent, contractor, sub-lessee or partner of the Tenant.

UNFORESEEN CONDITIONS

It is understood that unforeseen conditions may arise that may require modification of anything herein specified at particular times or during particular operations.

Modifications, adjustments, changes, alterations, additions, and deletions may be made by mutual agreement to anything herein

specified that will be consistent with carrying on the work in a reasonable manner and will retain the safety and convenience of those using the Turnpike.

The provisions of Article VII and 6.13 of the Lease between the Tenant and the Landlord, relative to Insurance and Indemnification will be applicable to the terms and conditions of this construction agreement and any modifications, adjustments, changes, alterations and deletions made thereto.

Approval of Plans

This Agreement in no way supersedes Article XI in the Lease. The Tenant has not yet submitted its design or building plans to Landlord for approval, and Landlord specifically retains all of its rights under said Article XI.

Physical Limitations

The cornice line of the base of the hotel along Dartmouth Street and Huntington Avenue will be no lower than the cornice line of the Boston Public Library and no higher than the cornice line of the Copley Plaza Hotel. The hotel tower will be set back at least 80 feet from the corner of Dartmouth Street and Huntington Avenue. No building, excluding penthouses, on the Demised Portion shall be higher than 390 feet over the height of the roadway of any adjacent street at its highest point, or, if none, of the nearest street. No buildings along Harcourt Street south of the line of the house fronts on the northerly side of St. Botolph Street extended easterly will be higher than 95 feet above the roadway of Harcourt Street at its highest point. The lowest elevation of structures over Stuart Street will be not

less than twenty (20) feet over the roadway of that part of Stuart Street over which it is to be located, the highest point will be not more than one hundred (100) feet over the lowest point, and the bridge will be not more than two hundred twenty (220) feet wide.

REVIEW PROCESS

Landlord and Tenant will continue the Citizens' Review Process, and the Citizens' Review Committee which they have carried on since early April 1977 until the Commencement of Construction Date or the end of May, 1980, whichever is earlier. The Landlord will continue to provide a consultant and staff for this process and the Tenant will continue to participate in the process as it has prior to the execution of this lease. Said consultant shall serve as the Chairman of the Citizens' Review Committee, and of the Design Review Subcommittee established in the following paragraph. The Citizen's Review Committee may advise the Landlord and the Tenant on such matters relating to the development as the Landlord may prescribe, including but not limited to the following:

(a) the relationship of the proposed deck over the Southwest Corridor transit line to be constructed by the Massachusetts Bay Transportation Authority from Dartmouth Street to Yarmouth Street, to the development;

(b) construction of at grade and below grade pedestrian connections between the development and the Back Bay Station;

(c) feasibility of implementing shuttle bus service linking the development to the Prudential Center/Boylston Street/ Newbury Street retail areas, and various off-site parking areas;

(e) construction of pedestrian connections between the development and the Prudential Center Area; and

(f) the development of advisory programs to assist the Tenant and the City of Boston in mitigating any potential adverse parking impacts the development may have on surrounding neighborhood.

Review and approval of the Tenant's design plans is, except to the extent of (i) the City of Boston's interest under its agreement with the Landlord dated January 29, 1970 and (ii) Boston Redevelopment Authority design review procedures under G.L. c. 121A and Chapter 652 of the Acts of 1960, totally within the control of the Landlord. Nevertheless, the Landlord will involve in this process, for the benefit of the Landlord and Tenant and the community, a subcommittee of the Citizens' Review Committee (hereinafter called the Design Review Subcommittee, which will continue in existence notwithstanding the discontinuance of the Citizens Review Committee) to be appointed by the consultant, to whom Landlord will from time to time submit for review and comments Tenant's design plans and specifications in accordance with the provisions of Article 11.1 of this lease. Said Design Review Subcommittee will be responsible for advising Landlord with respect to the Guidelines contained in the Final Recommendations

for Copley Square submitted by the Copley Square Citizens' Review Committee on September 22, 1977, specifically with respect to, but not limited to, the following:

(a) providing for active retail uses especially along Dartmouth and Stuart Streets, and active uses and other visual interests along all portions of the development abutting public streets;

(b) providing for a compatible integration of the development which complements and reinforces the scale and texture of surrounding areas, particularly with respect to the treatment of those portions of the development which are visible to the surrounding residential areas;

(c) providing for pedestrian movement and linkage from the Boston Public Library to Columbus Avenue;

(d) providing an adequate number of pedestrian rights-of-way around and through the development, which shall be well lit, clearly marked, accessible to the handicapped, and which protect the pedestrian from excessive wind turbulence, noise and fumes, including the provision of a landscaped walkway from Harcourt Street at the end of St. Botolph Street to Huntington Avenue; and

(e) providing for the softening of facades of all buildings through the use of appropriate materials, irregular setbacks, landscaping, and the like.

HOUSING

The housing which Tenant will construct will include at least 100 units of mixed income housing. A minimum of 25% of the

units must be available for rent at all times to persons and families of low income. The design of the housing structures must be such as to provide a mix of household types. It must be suitable, for example, for both families and elderly households. The parties will refer to definitions and standards of the Massachusetts Housing and Financing Agency, the United States Department of Housing and Urban Development, or such other public agency as may provide financing for such housing, in implementing the foregoing provisions. Such housing, in implementing the foregoing provisions. Such housing must be completed and ready for occupancy no later than the later of the following dates: (i) six months after the completion of the deck over the Southwest corridor transit line to be constructed by the Massachusetts Bay Transit Authority, where such structural deck abuts the project or (ii) the date for opening for business of any one of the major elements of the project; i.e., the hotel, the office building or a major department store, but excluding the parking garage. Such dates shall be extended for a period equal to the period of any delay caused by strikes, shortage of materials, severe weather conditions, or other similar causes beyond the Tenant's control.

If the Tenant fails to complete such housing and to have it ready for occupancy within the applicable time limit above set forth, it will pay to the Authority, as additional rent under the lease, an amount equal to twenty percent of the rent due the Authority during the period beginning with the expiration of such applicable time period and ending when such housing is completed and ready for occupancy.

OTHER DESIGN AND CONSTRUCTION MATTERS

The Tenant will provide a suitable memorial, preferably somewhere in the retail mall area, for the late Daniel Ahern, for many years the president of the Back Bay Association.

In matters such as massing, access, live edges, underpasses, landscaping, vehicle access points and the like, the Tenant will be guided in its design and the Landlord in its design review by the concepts which have arisen through the Citizens' Review process as reflected in the published recommendations resulting from such process, but will not be bound to do so whenever, in the judgment of the Authority, it would be inconsistent or in conflict with its primary duty to provide for safe, continuous and uninterrupted operation of the Boston Extension of the Massachusetts Turnpike Authority.

SCHEDULE D

AFFIRMATIVE ACTION

Construction Phase Jobs and Contracting

PREFACE

The procedures set forth in Schedules D, D-1 and D-2 have been embodied in this lease at the request of the Governor in order to ensure the carrying out of important policies of the Commonwealth of Massachusetts. If the validity (including the constitutionality) of such policies is challenged, the Authority will promptly place the matter before a court of competent jurisdiction and will defend in the ensuing proceedings with its counsel and at its expense the validity of such policies.

1. Tenant will incorporate, and will cause its agents and contractors to incorporate, the contract provision entitled "Construction Hiring Affirmative Action Program" attached hereto as Schedule D-1 and incorporated by reference herein, into every construction contract or subcontract let, in any amount, in connection with the Development, inclusive of the hotel. The above provision does not apply to finish work to be contracted by the Lessees of Tenant or to be performed in the hotel.

2. Tenant will incorporate, or cause to be incorporated, the contract provision entitled "Minority Business Participation Provision," attached hereto as Schedule D-2 and incorporated by

reference herein, in any contract specifications or other similar proposal documents provided to potential bidders on any general construction contract or contracts to be entered into by Tenant, or by any entity in which Tenant, directly or indirectly, holds a substantial beneficial interest, in connection with the Development, and in such general construction contract or contracts when executed.

3. In all solicitations for general contract proposals in connection with this project, Tenant will notify each potential bidder in writing of its obligations under Schedules D-1 and D-2, and will secure from its proposed general contractor or contractors prior to contract execution the following:

- (i) Certification by the proposed general contractor, in the form annexed to Schedule D-1, that it and its subcontractors will comply with the Construction Hiring Affirmative Action Program;
- (ii) Documentation, as required by Section V.B. of Schedule D-2 and in the forms annexed to Schedule D-2, demonstrating that the proposed general contractor is and will continue to be in compliance with the Minority Business Participation Provision.

Copies of all such certifications and documentation shall be provided to the Authority and to the Compliance Officer appointed in accordance with Schedules D-1 and D-2. No general construction contract shall be awarded or executed by Tenant unless the Authority has found, pursuant to this section and in

accordance with the procedures of Schedule D-2 where applicable, that the proposed general contractor has properly certified its intent to comply with the provisions of Schedule D-1 and has properly complied with the provisions of Schedule D-2. The Authority's determination as to whether a proposed general contractor is in compliance with the provisions of Schedule D-2 shall be final and binding and, to the maximum extent permitted by law, not subject to review. If the Tenant proceeds with its construction by "Fast-Tracking" or through the use of a Construction Manager rather than by a general construction contract, the Tenant will not enter into any Construction Management contract or any contract for a portion of the construction work to be performed for the Tenant unless the Authority has found, upon the basis of appropriate documentation and procedures substantially in accordance with those required by Schedules D-1 or D-2, whichever is applicable, that the intent and purpose of Schedule D-1 and D-2 have been, and will be, complied with. Any such finding shall be final and binding and, to the extent permitted by law, not subject to review.

4. Tenant will assist and cooperate actively with the Authority, the Massachusetts Commission Against Discrimination, (hereinafter the Commission), the Liaison Committees hereinafter provided for in Schedules D-1 and D-2, and the Compliance Officer in monitoring and enforcing full compliance by construction contractors and subcontractors with the provisions of Schedules D-1 and D-2. Tenant will furnish, or will cause its agents and con-

tractors to furnish, such information as the Authority, the Commission, or the Compliance Officer may request for supervision of such compliance. Upon a finding by the Commission, in accordance with the procedures specified in Schedules D-1 and D-2, that a contractor or subcontractor is not in compliance, Tenant will, after such notice and within such time limits as are provided for in Schedules D-1 and D-2, impose any one or more of such sanctions as the Tenant deems appropriate as are set forth in Schedules D-1 and D-2.

5. Failure or refusal by Tenant to seek to enforce full compliance by construction contractors and subcontractors in accordance with Paragraph 4 above, when so certified to the Authority by the Commission, will be deemed to be a default entitling the Authority to the remedies provided in (i) and (ii) below. In the case of such default, the Authority shall, without prejudice to any other rights and remedies provided pursuant to this lease or by law, have the right to:

- (i) assess upon Tenant, as additional rent under this lease, an amount equal to twenty percent of the rent due the Authority for the period from the Commission's certification of such failure or refusal by Tenant until Tenant has remedied the default complained of, or
- (ii) bring appropriate legal proceedings to enforce specific performance by Tenant of its obligations under Paragraph 4. Tenant will accept the Com-

mission's certification of noncompliance by any contractor or subcontractor as final and binding upon Tenant for purposes of such proceedings. Tenant and the Authority will cooperate in securing an expedited hearing and final decision of such dispute in a court of competent jurisdiction.

The Authority will notify Tenant, with copies to the Commission and the Compliance Officer, of commencement of any action pursuant to (i) and (ii) above.

Repeated and willful violations of Tenant's obligations under Paragraph 4 will be deemed to have occurred whenever the Commission so certifies to the Authority and will give the Authority the right, without prejudice to and in addition to any other rights and remedies provided pursuant to this lease or by law, to assess upon the Tenant, as additional rent under this lease, an amount equal to eighty percent of the rent due to the Authority during the period from such certification until the date as of which the Commission has certified that the Tenant is in full compliance with its obligations under Paragraph 4.

If, after any certification of default by Tenant, and the payment of additional rent by the Tenant in accordance with the provisions of this Paragraph 5, (i) a court of competent jurisdiction has found that such certification was in error; (ii) such finding has become final and there is no further appeal therefrom; (iii) or all such appeals have been finally resolved in favor of Tenant; the Landlord will refund to the Tenant the amount of such additional rent paid to it by Tenant.

Permanent Jobs

6. Tenant will cooperate with public and community agencies engaged in manpower recruitment and training to pursue as goals the furnishing of an adequate proportion of permanent jobs located at the Development to persons in the following categories:

- (i) Minorities - 30%;
- (ii) City of Boston residents - 50%;
- (iii) Residents of the neighborhoods of the South End, St. Botolph, Back Bay, Fenway, Lower Roxbury, Bay Village, Chinatown, and South Cove, as defined by the attached map labeled Attachment 1 (the "Impact Area") - 17.2%;
- (iv) Women - 50%.

Tenant will also make good faith efforts to ensure that appropriate permanent job opportunities are provided to handicapped persons. Permanent jobs will include seasonal and part-time jobs associated with the Development during its operational phases.

7. Tenant will notify all prospective Lessees or other occupants of the Development, prior to execution of any lease or occupancy agreement, that it supports the pursuit of the goals set forth in the foregoing Paragraph 6 and will encourage them to pursue such goals in their own employment practices. Tenant's Lessees, sub-lessees or other occupants of the Development are collectively referred to as Employers.

8. In connection with hiring to fill permanent jobs at the Development, Tenant and Employers shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age or sex. Tenant and Employers shall comply, to the extent applicable, with Title VII of the U.S. Civil Rights Act and M.G.L. c.151B with respect to employment at the Development.

9. Tenant shall provide within the Development adequate space for a recruitment and referral office to facilitate minority, female, resident and handicapped hiring during the initial leasing period for the Development. Such office may be staffed by appropriate manpower recruitment and training agencies of the Commonwealth, the City of Boston or both. Tenant will encourage Employers, especially those with seven or more employees, to make active use of such on-site recruitment and referral office and to notify the recruitment and referral office of vacancies when they occur and when such vacancies have been filled and particularly when they have been filled by a minority or non-minority person, male or female, handicapped person, resident of the Impact Area, the City of Boston, or elsewhere.

10. There shall be established by the Authority a Liaison Committee to assist Tenant and Employers with minority, female, and resident hiring. Such Liaison Committee shall consist of one representative of each of the following: the Commission; the Boston Redevelopment Authority; a City of Boston manpower training agency; a state manpower training agency; and such other

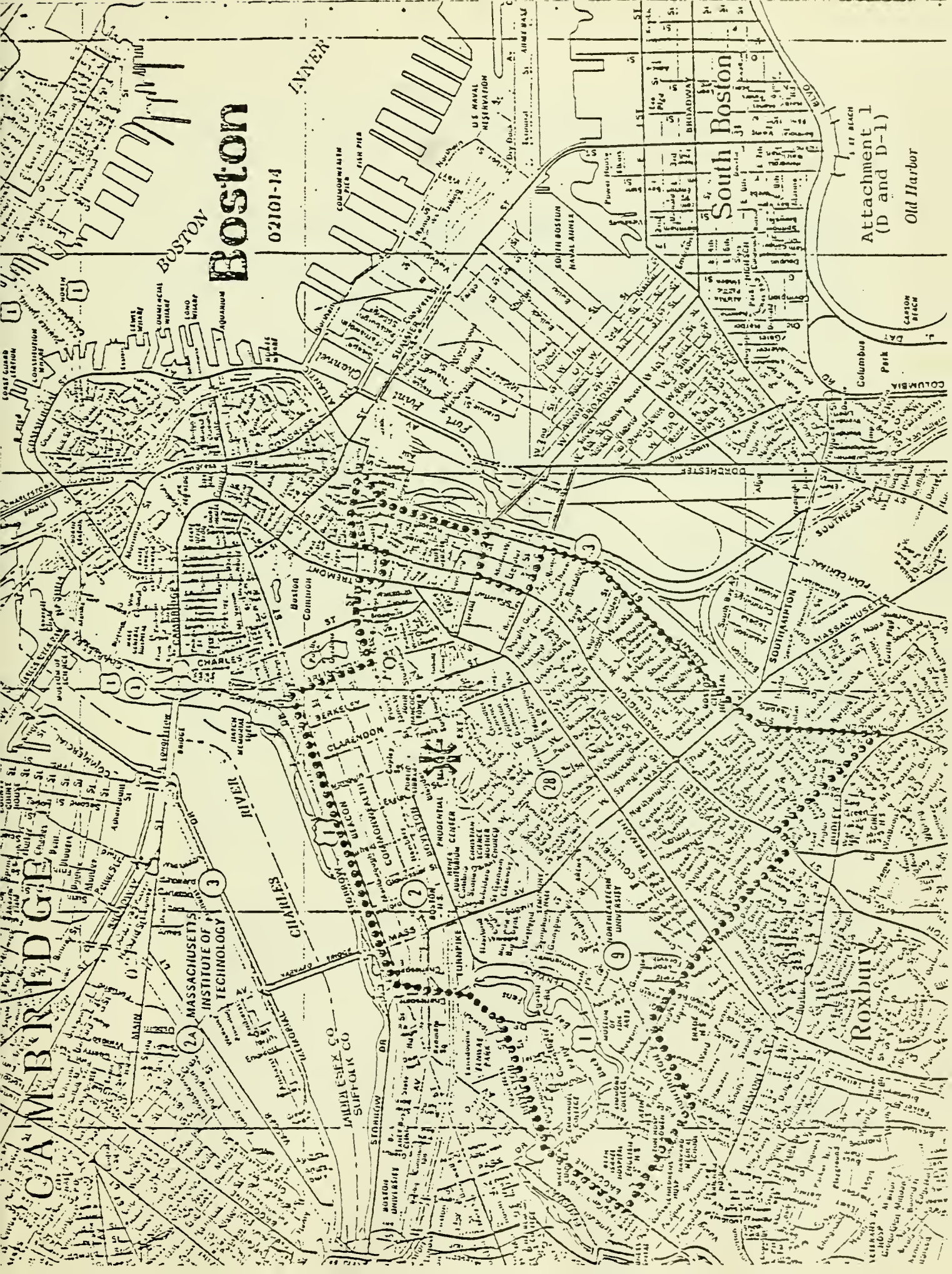
community-based recruitment and training organizations as the Authority shall designate, including at least one organization primarily serving Blacks, Hispanics, Asian-Americans, Women, and Impact Area residents respectively. The Liaison Committee shall be chaired by a representative of the Authority and may establish such procedures as it deems necessary to its operation.

11. Tenant will encourage Employers having seven or more employees to report, at least every four months during the first five years after the Initial Rent Increase Date and thereafter with such frequency as the Authority shall determine, to the Liaison Committee regarding the percentages of their employees located at the Development who are minority, female, Impact Area residents, handicapped, and City of Boston residents. Tenant shall meet with the Liaison Committee at least once a year to review the overall affirmative action status of the Development.

Other Business Opportunities

12. Tenant will attempt to set aside space in the range of 15,000 to 20,000 square feet facing on the proposed deck over the Southwest Corridor transit line for community-oriented stores. Of these, approximately 50% will be reserved for Community Development Corporations and Minority Business Enterprises at below-market rents. Whenever feasible and practicable, the Tenant will provide equal opportunity for Community Development Corporations and Minority Business Enterprises to carry out service requirements within the project, such as furnishing

security and maintenance, operating the parking garage, running concession stands, and supplying fuel.



Boston

02101-14

South Boston

Attachment 1
(D and D-1)

Old Harbor

CAMBRIDGE

MASSACHUSETTS
INSTITUTE OF
TECHNOLOGY

LAUREL EX CO
SUFFOLK CO

Roxbury

SCHEDULE D-1

CONSTRUCTION HIRING AFFIRMATIVE ACTION PROGRAM

I. Definitions

For purposes of this contract provision, "minority" refers to Asian-Americans, Blacks, Hispanic Americans, North American Indians, and Cape Verdeans. "Authority" refers to the Massachusetts Turnpike Authority. "Commission" refers to the Massachusetts Commission Against Discrimination. "Developer" or "Tenant" refers to Urban Investment and Development Co., or its successor as Lessee from the Authority of Copley Place.

II. Nondiscrimination and Affirmative Action Obligations

During the performance of this contract, the Contractor and all of its Subcontractors (hereinafter collectively referred to as the Contractor), for itself, its assignees, and successors in interest, agree as follows:

1. In connection with the performance of work under this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age or sex. The aforesaid provision shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment advertising; layoff and termination; rates of pay or other forms of compensation; conditions or privileges of employment; and selection for apprenticeship. The Contractor shall comply with Title VII of the U.S. Civil Rights Act, 42 U.S.C. s. 2000(e), and the Fair Employment Practices Law of the Commonwealth, M.G.L. c. 151B. The Contractor shall post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Commission setting forth the provisions of M.G.L. Chapter 151B.
2. In connection with the performance of work under this contract, the Contractor shall undertake in good faith affirmative action measures designed to eliminate any discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, age or sex, which may have been or be found to exist and to eliminate and remedy any effects of such discrimination in the past. Such affirmative action shall entail positive and aggressive measures to ensure equal opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation, and in-

service or apprenticeship training programs. This affirmative action shall include all action required to guarantee equal employment opportunity for all persons, regardless of race, color, religious creed, national origin, age, or sex.

3. In connection with the performance of work under this Contract, the Contractor shall undertake in good faith affirmative action measures designed to provide employment opportunities to women, to City of Boston residents, and to residents of the Impact Area comprising the neighborhoods of the South End, St. Botolph, Bay Bay, Fenway, Lower Roxbury, Bay Village, Chinatown, and South Cove, as defined by the attached map labeled Attachment 1. Such affirmative action shall entail good faith efforts to work with the Liaison Committee established pursuant to this contract provision to recruit and employ women, Boston residents and Impact Area residents for available construction.

III. Utilization of Minority Workers

1. As part of its obligation of remedial action under the foregoing section, the Contractor shall take affirmative action as provided in this contract provision to utilize in each job category, including but not limited to qualified bricklayers, carpenters, cement masons, electricians, ironworkers, operating engineers, and those "classes of work" enumerated in Section 44C of Chapter 149 of the Massachusetts General Laws, at least 20% minority employee man hours. Recognizing that in the Boston area there will be substantial public construction activity proceeding with higher minority percentage goals, the Contractor shall attempt in good faith to exceed 20%. This paragraph does not apply to finish work to be contracted by the Lessees of Tenant or to be performed in the hotel.
2. In the hiring of journeymen, apprentices, trainees, and advanced trainees, the Contractor shall rely on referrals from traditional referral sources utilized by the construction industry, and from community training organizations designated by the Authority.
3. The Contractor acknowledges that it has, prior to the execution of this contract, signed and submitted the "Contractor's Certification of Compliance with Construction Hiring Affirmative Action Program," Attachment 2 of this contract provision, which shall be deemed a part of this contract. The Contractor agrees to secure this certification from each of its sub-

contractors prior to execution of such subcontract and to submit copies of such certifications to the Developer, the Authority, the Commission, and the Compliance Officer.

IV. Non-Discrimination in Subcontracting and Procurement of Material and Equipment

In connection with the performance of any work under this contract, the Contractor will not discriminate on grounds of race, color, religious creed, national origin, age or sex in the selection or retention of subcontractors, or in the procurement of materials and rentals of equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for the procurement of materials or equipment, each potential subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this contract relative to non-discrimination and affirmative action. The Contractor further agrees to take affirmative action to subcontract with and to procure materials and equipment from qualified minority business enterprises as provided in Schedule D-2, "Minority Business Participation Provision," if applicable.

V. Monitoring Procedures

1. There shall be established for the life of this contract an advisory body to be known as the Liaison Committee, composed of one representative from each of the following agencies, offices, bodies, or organizations: The Developer; Boston Redevelopment Authority; the Commission; the State Office of Minority Business Assistance; Associated General Contractors of Massachusetts, Inc.; Construction Industries of Massachusetts, Inc.; Contractors' Association of Boston, Inc.; Boston Building Trades Council; Third World Construction Workers Jobs Clearing House; Women in Construction; Southwest Corridor Land Development Coalition, Inc.; the Southwest Corridor Development Coordinator or his designee; the State Employment and Training Council of the Department of Manpower Development; and the City of Boston Economic Employment and Policy Administration.
2. There shall be at all times during the life of this contract a Compliance Officer, who shall be appointed by, and shall be an employee of, the Authority, and who shall serve at its pleasure. The Compliance Officer shall make available copies of all reports, documents, and information received by him in connection with this contract provision to all members of the Liaison Committee.

3. The Liaison Committee shall hold such meetings as are necessary to carry out its functions under this contract provision, which meetings shall be open to the public. The Liaison Committee shall act by majority vote, with a single majority of members constituting a quorum. The Compliance Officer shall be the chairman of the Liaison Committee, which may adopt such procedures as are necessary or useful to the conduct of its proceedings. The Liaison Committee shall keep a written account of its meetings and may make formal recommendations in writing to any interested parties. In the event of disagreement, the recommendation of the majority of the Liaison Committee may be accompanied by a written statement prepared by the minority.
4. The Contractor (or its agent, if any, designated by him as the on-site affirmative action officer) shall recognize the Liaison Committee as an affirmative action body, and shall establish a continuing working relationship with the Liaison Committee on matters related to affirmative action recruitment, referral, employment and training.
5. The Contractor shall prepare projected manning tables on a quarterly basis of workers required in each trade. Copies shall be furnished one week in advance of the commencement of the period covered to the Compliance Officer.
6. Records of employment referral orders, prepared by the Contractor, shall be made available to the Compliance Officer on request.
7. The Contractor shall prepare periodic and frequent reports in a form approved by the Compliance Officer of hours worked in each trade by each employee, identified as minority or non-minority. Copies of these shall be provided to the Compliance Officer.
8. The Contractor shall notify the Compliance Officer, prior to the execution of any construction subcontract, of the name, address, and telephone number of the prospective subcontractor, the type of work to be performed, the projected date of contract execution, and the estimated dates of commencement and completion of the work to be performed. Such notice may be given in writing or, if time does not permit, orally or by telephone. In emergencies or where otherwise not reasonably practiceable, such prior notice need not be given, but in such cases, notice will be given as soon as reasonably practicable after the execution of such subcontract.

9. The Contractor will provide such other information and reports as may be reasonably required by the Compliance Officer and will permit access by the Compliance Officer to the job site and to relevant books, records, payroll accounts and other sources of information which may be reasonably determined by the Compliance Officer to affect the employment of personnel. Where information required is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Compliance Officer and shall set forth what efforts it has made to obtain this information.

VI. Compliance Procedures and Sanctions

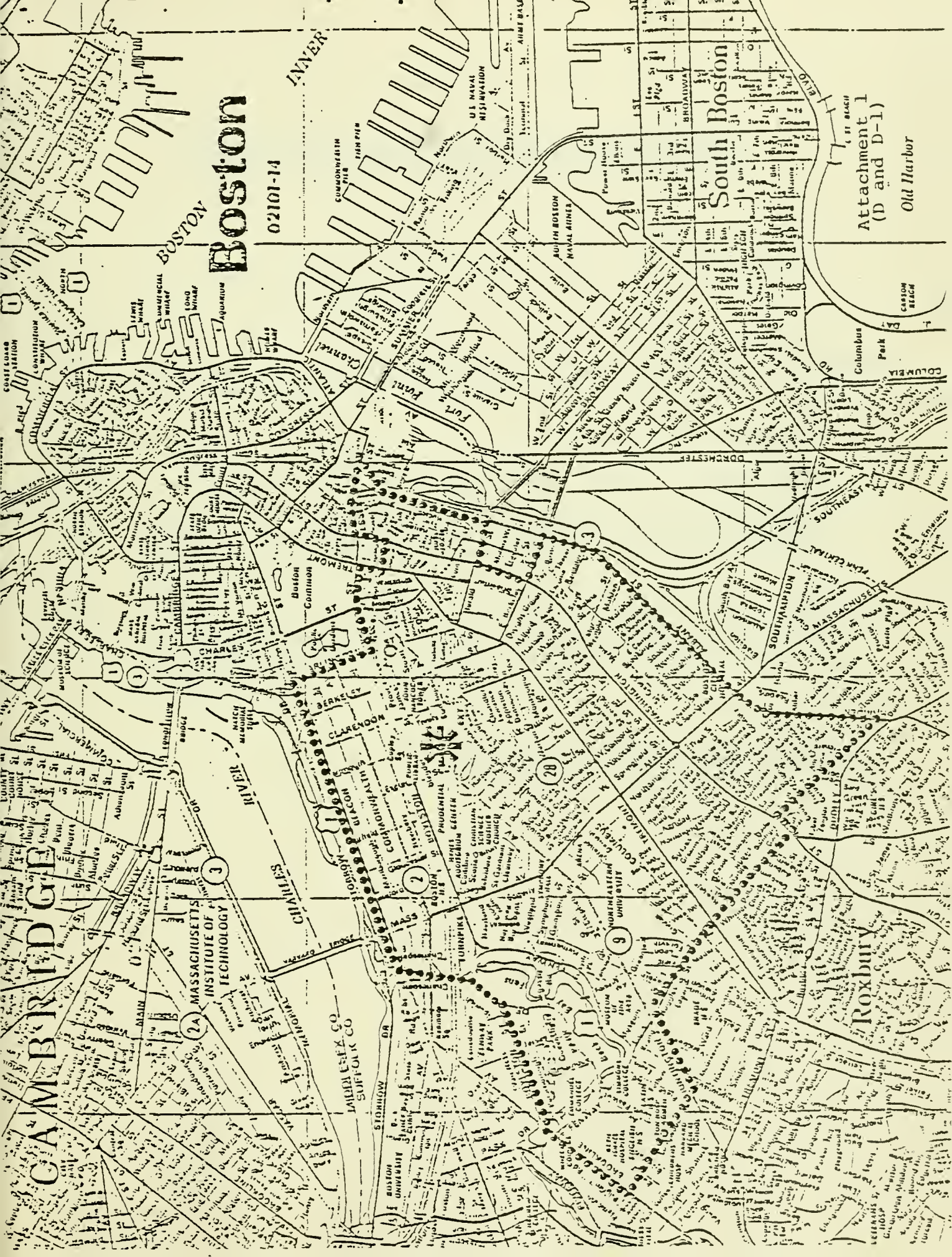
1. Whenever the Compliance Officer or the Liaison Committee believes that the General Contractor or any Subcontractor may not be operating in compliance with this contract provision as it relates to the minority hiring goal it shall request the Commission to conduct an appropriate investigation and hearing. Notice of initiation of such investigation and of any formal hearing shall be given in writing to the Liaison Committee, the Contractor, the General Contractor, if the subject to investigation is a Subcontractor, and the Developer.
2. The Commission, directly or through its designated agent, shall conduct an appropriate investigation and, if it finds cause to believe that the Contractor is not operating in compliance with the minority hiring goal, shall conduct an adjudicatory hearing as that term is used in M.G.L. c. 30A. If the Commission determines (a) that the Contractor is meeting the minimum percentage goal of this contract provision or (b) that the Contractor has taken or is taking every reasonably possible measure to achieve compliance but is unable to do so because insufficient qualified minority workers are available; the Commission shall find the Contractor to be in compliance. If the Commission determines that the Contractor has neither satisfied the minimum percentage nor taken every reasonably possible measure as required above, the Commission shall find the Contractor to be not in compliance with this contract provision and shall recommend to the Developer imposition of one or more of the sanctions listed in Section VI.3. below to attain full and effective enforcement. The Commission shall issue in writing a report of its finding, setting forth the facts and reasons on which it is based. Copies of such report shall be sent to the Contractor, the General Contractor if applicable, the Developer, the Liaison Committee, and the Authority.

3. Within fourteen days of receipt of the Commission's finding, the Developer shall move to impose one or more of the following sanctions as the Developer deems appropriate:

- a. The recovery from the General Contractor of 1/100 of 1% of the contract award price or \$1000, whichever sum is greater, in the nature of liquidated damages or, if a Subcontractor is in non-compliance, the recovery from the General Contractor, to be assessed by the General Contractor as a back charge against the Subcontractor, of 1/10 of 1% of the subcontract price, or \$400 whichever sum is greater, in the nature of liquidated damages, for each week that such party fails or refuses to comply;
- b. The suspension of any payment or part thereof due under the contract until such times as the General Contractor or Subcontractor, as the case may be, is able to demonstrate its compliance with the terms of the contract;
- ~~c. The termination, or cancellation, of the contract, in whole or in part, unless the General Contractor or Subcontractor, as the case may be, is able to demonstrate within a specified time its compliance with the terms of the contract;~~
- d. The retention in connection with final payment or final acceptance of any payment or part thereof due under the contract, where the General Contractor or Subcontractor, as the case may be, has been unable to demonstrate compliance with the terms of the contract.

The Developer shall forward to the Authority, the Commission, and the Compliance Officer copies of all written communications to and from the Contractor relating to imposition of such sanctions.

4. If at any time after the imposition of one or more of the above sanctions a Contractor or Subcontractor believes that it can demonstrate that it is in compliance with this contract provision, it may request the Developer, in consultation with the Commission, to suspend the sanctions conditionally, pending a final determination by the Commission as to whether the Contractor is in compliance. Upon final determination of the Commission, the Developer, based on the recommendation of the Commission, shall either lift the sanctions or reimpose them.



Boston

02101-14

South Boston

Attachment 1
(D and D-1)

Old Harbor

CAMBRIDGE

Roxbury

MASSACHUSETTS
INSTITUTE OF
TECHNOLOGY

CHILMARK

CLARENDON

BERKELEY

CHARLES

CONTINENT

CLARENDON

CLARENDON

CLARENDON

CLARENDON

CLARENDON

CLARENDON

CLARENDON

CLARENDON

CLARENDON

CLARENDON

CLARENDON

CLARENDON

Attachment 2 (D-1)

CONTRACTOR'S CERTIFICATION OF COMPLIANCE WITH
CONSTRUCTION HIRING AFFIRMATIVE ACTION PROGRAM

_____certifies
Contractor

that:

1. It intends to use the following listed construction trades in the work under the contract

_____; and

2. It will comply with the Construction Hiring Affirmative Action Program to be incorporated as Appendix A of the contract, including the specific affirmative action steps contained therein; and
3. It will obtain from each of its subcontractors and submit to the contracting or administering agency prior to the award of any subcontract under this contract this contractor certification.

(Signature of authorized representa-
tive of contractor)

SCHEDULE D-2

MINORITY BUSINESS PARTICIPATION PROVISION

I. Applicability

This provision shall apply to any Contractor proposing to enter into a general construction contract with Urban Investment and Development Co. (the Developer) for construction work in connection with the development known as Copley Place. This Provision shall be incorporated in contract specifications and other similar proposal documents provided to potential bidders on any such general construction contract, and shall also be incorporated into every general construction contract executed between a General Contractor and the Developer as a fully binding part of such contract.

II. Definitions

For the purpose of this Provision, the following terms are defined:

- A. Authority - The Massachusetts Turnpike Authority;
- B. Bidder - Any individual, partnership, joint venture, corporation, or firm which has submitted a general bid to the Developer and which is being proposed by the Developer to the Authority for approval as a general construction contractor to be awarded the Contract of which this Provision is a part.
- C. Contract - The general construction contract, executed or to be executed between a general Contractor and the Developer for performance of construction work in connection with Copley Place, of which this Provision is a part;
- D. Contractor - The Bidder to whom the Contract is awarded by the Developer with approval of the Authority;
- E. Contract price - The total bid price of the Contractor to whom the Contract is awarded;
- F. Developer - Urban Investment and Development Co., or its successor as lessee from the Authority of Copley Place;
- G. Letter of intent - A letter, in the form annexed to this Provision as Attachment 1, to be signed by a Minority Business Enterprise with respect to certain work under the Contract;

- H. Minority person - Persons who are Asian-Americans, Blacks, Hispanic Americans, North American Indians, or Cape Verdeans;
- I. Minority Business Enterprise - A business organization which is beneficially owned and controlled by minority persons as follows:
 - 1. a sole proprietorship consisting of an individual who is a minority person;
 - 2. a partnership or joint venture in which at least 50% of the beneficial ownership interests are held by minority persons;
 - 3. a corporation or other entity controlled by minority persons and in which over 50% of the voting interests and over 50% of the beneficial ownership interests are held by minority persons;

Beneficial ownership and control shall be indicated by the following where applicable to the particular form of business organization: ownership of each class of stock; unrestricted voting rights; right to receive profits and all other benefits attached to ownership; and participation in the management of the enterprise. The existence of any agreements, options, rights of conversion or other restraints which may be exercised within three years and which, if exercised, could reduce minority ownership or control to less than the requisite percentage, shall establish that the existing enterprise is not a Minority Business Enterprise;

- J. Minority Business Identification Statement - A statement, in the form annexed to this Provision as Attachment 2, to be prepared and signed by a Minority Business Enterprise and containing certain information with respect to the Minority Business Enterprise;
- K. Perform - The doing of work by a contractor with its own organization. No work shall be reported on the schedule for participation by Minority Business Enterprises as being performed by Minority Business Enterprises which is to be subcontracted, at any tier, to a non-Minority Business Enterprise;
- L. Qualified - A Minority Business Enterprise is qualified if it has (or is able to obtain by its own efforts, or by advice, aid or counsel reasonably and normally extended by bidders and contractors to their subcontractors and suppliers or available from government or

private agencies) the necessary experience, organization, technical qualifications, skills, facilities and licenses to perform work or supply goods or services as proposed, including the performance schedule; and its principals do not have an unsatisfactory record of integrity, judgment and performance;

- M. Schedule for Participation by Minority Business Enterprises (Schedule) - A schedule, in the form annexed to this Provision as Attachment 3, containing certain information with respect to work to be performed and goods or services to be supplied by Minority Business Enterprises;
- N. Supply - The provision of any materials or services, including rental of equipment, by a vendor to the Contractor. No materials shall be reported on the Schedule for Participation by Minority Business Enterprises as being supplied by a Minority Business Enterprise unless they are manufactured or assembled by the Minority Business Enterprise or supplied from existing inventory, or otherwise supplied in accordance with normal business practices of suppliers who are not brokers.
- O. Unavailable - A Minority Business Enterprise is unavailable if it has sufficient knowledge of the Contract to formulate (or decline to formulate) a proposal to perform work or supply goods or services, but it is unwilling or unable to make a proposal.

III. Utilization of Minority Business Enterprises

The Bidder shall take affirmative action, as provided in this Provision, to have Minority Business Enterprises perform work and/or supply materials or services for a total price not less than 5% of the Contract price; provided, that a maximum of 1% of this stated goal shall be satisfied by utilization of Minority Business Enterprises to supply materials or services. If the Bidder cannot meet the percentage goal stated in this Section, the Bidder may be required to demonstrate to the satisfaction of the Authority that:

- A. it has taken every reasonably possible measure to contact and negotiate with Minority Business Enterprises in order to meet the stated goal;
- B. it was unable, notwithstanding such measures, to achieve said goal because Minority Business Enterprises were not qualified or were unavailable or were not reasonably competitive in price; and

- C. it did subcontract such work to and purchase such goods and services from Minority Business Enterprises as it could, using every reasonably possible measure.

Determination of Bidder's compliance or non-compliance with this Provision shall be made by the Authority. No general construction contract shall be awarded or executed by the Developer with Bidder unless the Authority has found Bidder to be in compliance. The Liaison Committee shall upon request of the Contractor provide the Contractor with a list of minority enterprises for any trade designated by the Contractor.

IV. Liaison Committee

- A. There shall be established for the life of this Contract a body to be known as the Liaison Committee, an advisory committee composed of one representative from each of the following agencies, offices, bodies, or organizations: the Developer; Boston Redevelopment Authority; the Massachusetts Commission Against Discrimination; the State Office of Minority Business Assistance; Associated General Contractors of Massachusetts, Inc.; Construction Industries of Massachusetts, Inc.; Contractors' Association of Boston, Inc.; Boston Building Trades Council; Southwest Corridor Land Development Coalition, Inc.; the Southwest Corridor Development Coordinator or his designee; the State Employment and Training Council of the Department of Manpower Development; and the City of Boston Economic Employment and Policy Administration.
- B. There shall be at all times during the life of this contract a Compliance Officer, who shall be appointed by, and shall be an employee of, the Authority, and who shall serve at its pleasure. The Compliance Officer shall serve such functions as are assigned to him by Sections VI and VII of this Provision. The Compliance Officer shall make available copies of any reports, documents, and information received by him in connection with this Provision to all members of the Liaison Committee.
- C. The Liaison Committee shall hold such meetings as are necessary to carry out its functions under this Provision, which meetings shall be open to the public. The Liaison Committee shall act by majority vote, with a simple majority of members constituting a quorum. The Compliance Officer shall be the chairman of the Liaison Committee, which may adopt such other procedures as are necessary or useful to the conduct of its duties. The Liaison Committee shall keep a written account of its meetings and may make written recommendations to interested parties. In the event of disagreement, the

recommendation of the majority of the Liaison Committee may be accompanied by a written statement prepared by the minority.

V. Procedures Prior to Contract Award

- A. The Developer shall notify the Authority in writing when it desires to propose a Bidder to the Authority for approval as a general construction contractor to be awarded the Contract of which this Provision is a part, and the Authority shall notify the Liaison Committee thereof.
- B. The Bidder shall submit to the Developer and the Authority, and the Authority shall provide access to the Liaison Committee to the following information:
 1. projections of the types of work under the proposed Contract that the Bidder intends to have performed by subcontract, the types of materials and services that the Bidder intends to have supplied by vendor contract, and approximate timetables for the execution of such subcontracts and vendor contracts;
 2. a completed Schedule for Participation by Minority Business Enterprises, listing those Minority Business Enterprises which will perform work or supply goods and services, including in the case of a Minority Business Enterprise Bidder listing the Bidder itself. The Schedule shall also state the addresses of each listed Minority Business Enterprise; the total price or where applicable the minimum price to be paid to all listed Minority Business Enterprises; and the percentage that such sum total is of the Contract price. The above information shall be taken from each Letter of Intent submitted under this subsection as provided below;
 3. a completed and signed Letter of Intent for each Minority Business Enterprise proposed to be used by the Bidder, other than the Bidder itself, listing the Contract items the Minority Business Enterprise is proposing to perform or supply, and the proposed price for each item;
 4. a completed and signed Minority Business Identification Statement, or an equivalent form approved by the State Office of Minority Business Assistance, for any Minority Business Enterprise listed on the Schedule for Participation by Minority Business Enterprises; and

5. in the event that the Minority Business Enterprise participation listed on the Schedule is not sufficient to fulfill the goal stated in Section III of this Provision, a detailed statement by the Bidder of the reasons why it believes it is in compliance with this Provision and the standards set forth in Section III, and a list of the names, addresses and telephone numbers of the Minority Business Enterprises contacted by the Bidder with respect to the Contract.
- C. As soon as practicable following receipt of such information from the Bidder and in no case more than seven days thereafter, the Authority may request a meeting to review whether the Bidder should be determined to be in compliance with this Provision. The Bidder and the Developer shall meet with the the Authority and the Liaison Committee if requested by the Authority and shall provide the Authority with any requested information regarding the Bidder's efforts to comply with this Provision. Such information may include, without limitation: specific documentation of the unavailability of Minority Business Enterprises which the Bidder contends were unavailable to it; detailed statement by the Bidder of reasons for any conclusion that Minority Business Enterprises contacted by it were not qualified; and description of information provided to Minority Business Enterprises regarding specifications for needed work or supplies. At such meeting, the Bidder shall have an opportunity to present information and arguments pertinent to its compliance with this Provision. The Authority may, further, require the Bidder and the Developer to produce such additional information as it deems appropriate, and may obtain whatever other and further information, from whatever other sources, it deems appropriate.
- D. Within ten days of its initial meeting with the Bidder and the Developer, the Liaison Committee shall make its comments in writing to the Authority whether or not it believes that the Bidder is in compliance with this Provision, stating the facts and reasons upon which it relies. A copy of the Liaison Committee's comments shall be sent to the Bidder and the Developer.
- E. The Bidder or the Developer shall be entitled, within five days of receiving the Liaison Committee's comments to request in writing an opportunity to meet with the Authority to present pertinent arguments and information relating to the Authority's final determination of the Bidder's compliance with this Provision. If so requested, the Authority shall designate a reasonable

date, time and place for such a meeting. The Authority may request such further information from the Developer as it deems appropriate, and may rely on any factual conclusion reported by the Liaison Committee which is not contradicted by the Bidder or the Developer.

- F. Within ten days of its meeting with the Bidder and the Developer, or if none within fifteen days of receiving the Liaison Committee comments the Authority shall issue in writing a final determination, setting forth the facts and reasons on which it is based, whether the Bidder is in compliance with the requirements of this Provision, and award and execution of the Contract with Bidder is therefore approved; or whether the Bidder is not in compliance and the Developer may not enter into such contract with Bidder. A copy of such determination shall be sent to the Bidder, the Developer, and the Liaison Committee. Such determination shall be final and binding and, to the maximum extent permitted by law, not subject to further review.

VI. Performance after Contract Award

- A. During the life of the Contract, the Contractor's fulfillment of the percentage goal in Section III shall continue to be determined by reference to the Contract price, even though the total of actual contract payments may be greater or less than the Contract price.
- B. The Contractor shall notify the Developer and the Compliance Officer of the execution of each subcontract or vendor contract listed on the schedule for participation by Minority Business Enterprises. The Contractor shall provide such other information or reports as may be required by the Compliance Officer, and shall permit access by the Compliance Officer to the job site and to any relevant books, records, accounts, or other sources of information necessary to monitor compliance with this Provision.
- C. The Contractor shall not perform or supply with its own organization, or secure from any other business enterprise, any work, goods or services designated for the named Minority Business Enterprises on its Schedule for Participation by Minority Business Enterprises, without the prior approval of the Authority in accordance with Subsection VI. D. below, except in emergencies or when otherwise not reasonably practicable.
- D. If the Contractor is unable, for reasons beyond its control, to subcontract work or purchase goods and

services from Minority Business Enterprises in accordance with its original Schedule, it may submit to the Developer and the Authority the reasons for its inability to comply with its Schedule and its proposed alternative subcontracts to or purchases from Minority Business Enterprises. Such alternative subcontracts or purchases shall be for total prices equal either to the amount deleted from the original Schedule, or to the amount necessary to meet the percentage goal stated in Section III, whichever is less. If approved by the Authority such revised Schedule shall govern the Contractor's performance in meeting its obligations under this Provision.

- E. The Authority will consult with the Liaison Committee in respect of all of the foregoing matters.

VII. Enforcement and Sanctions

- A. Whenever the Authority believes that the Contractor may not be operating in compliance with this Provision, it shall request the Massachusetts Commission Against Discrimination (Commission) to conduct an appropriate investigation and hearing. Notice of initiation of such investigation and hearing shall be given in writing to the Developer, Contractor and the Liaison Committee.
- B. The Commission, directly or through its designated agent, shall conduct an appropriate investigation and, if it finds cause to believe that the Contractor is not operating in compliance, shall conduct an adjudicatory hearing as that term is used in M.G.L. c. 30A. If the Commission determines that the Contractor is in compliance with the percentage goal; or, if not satisfying the goal, that the Contractor (1) has taken every reasonably possible measure to comply with this Provision, (2) was unable, notwithstanding such measures, to comply with this Provision, because Minority Business Enterprises were not qualified or unavailable, or were not reasonably competitive in price and (3) did subcontract such work to and purchase such goods and services from Minority Business Enterprises as it could, using every reasonably possible measure; the Commission shall find the Contractor to be in compliance. If the Commission finds the Contractor to be not in compliance with this Provision, it shall recommend to the Developer the imposition of one or more sanctions listed in Section VII. C. below to attain full and effective enforcement. The Commission shall issue in writing a report of its finding, setting forth the facts and reasons on which it is based. Copies of such report shall be sent to the Authority,

the Contractor, the Developer and the Liaison Committee.

C. Within fourteen days of receipt of the Commission's finding, the Developer shall move to impose one or more of the following sanctions as the Developer deems appropriate:

1. suspension of payment for the work that should have been performed by a Minority Business Enterprise or the materials or services that should have been supplied by a Minority Business Enterprise;
2. requiring the Contractor to subcontract with or purchase goods or services from a Minority Business Enterprise;
3. retention in connection with final payment or final acceptance of any amounts scheduled to be expended for work performed or materials or services supplied by Minority Business Enterprises, less any amounts actually paid to Minority Business Enterprises and any payments already suspended under Section VII. C.1.;
4. termination or cancellation, in whole or in part, of the Contract, unless the Contractor is able to demonstrate within a specified time its compliance with this Provision.

The Developer shall forward to the Commission and the Authority, and the Authority shall furnish to the Liaison Committee, copies of all written communications to and from the Contractor relating to imposition of such sanctions.

D. If at any time after the imposition of one or more of the above sanctions, the Contractor believes it can demonstrate that it is in compliance with this Provision, it may request the Developer, in consultation with the Commission, to suspend the sanctions conditionally, pending a final determination by the Commission as to whether the Contractor is in compliance. Upon final determination by the Commission, the Developer, based on the recommendation of the Commission, shall either lift the sanctions or reimpose them.

MINORITY BUSINESS PARTICIPATION

LETTER OF INTENT

TO

Name of General Bidder

1. My company intends to perform work/ supply goods or services in connection with the above project as

_____ an individual

_____ a partnership

_____ a corporation

_____ a joint venture with _____

2. My minority status is confirmed on the attached Minority Business Identification Statement.

3. If you are awarded the Contract, my company intends to enter into a subcontract with your firm to perform the work/ a contract with your firm to supply the goods/or services described on the following sheet for the prices indicated.

LETTER OF INTENT: PAGE 2

TOTAL PRICE

Date _____

Name of Minority Business Enterprise

By _____

(A Minority Business Enterprise proposing to perform work or supply goods or services shall complete this form; the general Bidder shall submit the form to the Developer and the Massachusetts Turnpike Authority Attach additional pages in order to answer questions completely.)

MINORITY BUSINESS IDENTIFICATION STATEMENT

Name of Business _____ Phone No. _____

Address _____

Federal I.D. No. _____

I hereby certify that _____

(Name of Business)

is a Minority Business Enterprise as defined below:

A. Minority Business Enterprise (or Minority Business) means a business organization which is beneficially owned and controlled by minority persons as follows:

1. a sole proprietorship consisting of an individual who is a minority person;
2. a partnership or joint venture in which at least 50% of the beneficial ownership interests are held by minority persons; or
3. a corporation or other entity controlled by minority persons and in which over 50% of the voting interests and over 50% of the beneficial ownership interests are held by minority persons.

Beneficial ownership and control shall be indicated by the following where applicable to the particular form of business organization: ownership of each class of stock; unrestricted voting rights; right to receive profits and all other benefits attached to ownership; and participation in the management of the enterprise.

The existence of any agreements, options, rights of conversion or other restraints which may be exercised within three years and which, if exercised, could reduce minority ownership or control to less than the requisite percentage, shall establish that the existing enterprise is not a Minority Business Enterprise.

3. Minority person means persons who are Asian Americans, Blacks, Hispanic Americans, North American Indians, or Cape Verdeans.

Authorized Signature _____

Type/Print Name _____

Title _____

Date _____

(In the following sections the terms 'Minority Business Enterprise' and 'Minority person' are defined as above.)

1. Name(s) and Title(s) of person(s) completing this form.

Name

Title

2. Date of Business Organization _____

3. Legal structure (check one)

1. Corporation
2. Sole Proprietorship
3. Limited Partnership
4. Partnership
5. Joint Venture
6. Describe if other:

4. Percentage of Minority ownership in the business enterprise. _____

For questions #5-10 draw a circle around names who are Minority persons.

5. Who decides which jobs the business will do?

6. Who decides on the geographical location in which the business will operate?

7. Who signs the performance bonds which the business obtains?

8. Who negotiates and signs for insurance for the business?

9. Who signs checks in the name of the business? Indicate any limitations, including amount per check and requirement of multiple signatures.

10. Who hires and fires employees of the business?

May the above person(s) fire any minority employee who has an ownership interest in the business?

11. Who supervises jobs that the business undertakes?

12. Indicate the source(s) of the investment capital for Minority persons who have an ownership interest in the business: (a) Personal savings; (b) Proceeds of sale of real or personal property (if sold within the past six (6) months state date sales contract was executed):

(c) Proceeds if sale of business interest (if sold within past six months state date when sales contract was executed); (d) Personal loan (if made within past six months state date and name of lender); (e) Institutional loan (if made within past six months state name and date of lender) or (f) Other (specify).

Name of owner of shareholder	Source(s) of Capital (indicate Letter)
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.
6.	6.

13. If the source(s) of capital is a gift, state the

1. Name of the source(s) _____
2. Date of gift _____
3. Conditions of gift _____
4. Whether source is a Minority person _____ or Minority Business Enterprise. _____

14. If the source(s) of capital is a loan state:

1. Name of source(s) _____
2. Date of loan _____
3. Whether the source is a Minority person _____ or Minority Business Enterprise. _____

15. To Be Completed by Corporations

- a. Number of authorized shares. (If more than one class, list number of classes and the number of shares per class.)
- b. Number of shares issued as of this date. (Indicate class, if more than one) _____

- c. If a close corporation, list the names of Minority shareholders and the number of shares in each class that correspond to each name.
- d. If a public corporation, list the number of shares owned by Minority persons in each class as of this date.
- e. Indicate which classes have voting rights, and what the voting rights include.
- f. Is the signer aware of any agreement(s) among the shareholders limiting voting rights of shares held by Minority Persons? If so, state the limitations.
- g. Are the Minority person(s) who are shareholders aware of any agreement to limit the voting rights of shares owned by Minority persons If so, state the limitations.
- h. List all members of Board of Directors. Circle those names which are Minority persons.
- i. State the name of each Minority person who is an officer of the corporation and the position(s) of each.

16. To Be Completed by Partnerships:

- a. Total number of partners _____
- b. Total aggregate investment of (a) above _____
- c. Names of Minority partners _____
- d. Total aggregate investment of (c) above _____
- e. If any of the Minority persons listed above, a-d, obtained their interest within the last six months, state names and the date the interest was obtained.

17. To Be Completed by Limited Partnerships:

- a. Total number of limited partners _____
- b. Total aggregate investment of (a) above _____
- c. Names of Minority limited partners _____
- d. Total aggregate investment of (b) above _____

f. Total investment of (e) above

g. Names of Minority general partners _____

h. Total aggregate investment of (g) above _____

i. If general partner is a corporation, state the percentage of shares in the corporation owned by Minority persons.

j. If a Minority person listed above, a-i, obtained an interest within the last six months, state the name and the date the interest was obtained.

18. To Be Completed by Sole Proprietorship:

If the business was sold to or made a gift to the sole proprietor within the past six months state:

a. The date when the instrument of conveyance was executed and/or the date when an oral agreement to sell was made _____

b. The name of the seller(s) or grantor(s) who were privy to the agreement and whether said person(s) is a Minority person or a Minority Business Enterprise.

19. If any of the owners of the business are a corporation, complete additional forms for each such corporation and attach them.

20. The Massachusetts Turnpike Authority may request the following additional information or other information as is necessary.

a. Corporations:

1. Articles of organization;

2. Corporate by-laws;

3. Changes in officers and directors during the last six months.

b. Partnerships:

1. A copy of the partnership agreement.

c. Limited Partnerships:

1. A copy of the limited partnership agreement.

I certify under the pains and penalties of perjury that the foregoing information (including pages attached) is correct and complete.

Signed _____

Print _____
(Name) (Date)

I (we), the undersigned minority individuals who have an ownership interest in _____, certify that the
(name of business)
information supplied herein (including pages attached) is correct.

Signed _____

Print _____
(Name) (Date)

(Power of Attorney must be attached).

SCHEDULE FOR PARTICIPATION BY MINORITY BUSINESS ENTERPRISES

Name of General Bidder _____

Name of Minority Business Enterprise	Address & Phone No.	Type of Goods or Services to be Supplied or Type of Work to Be Performed. (Electrical, Paving, etc.) (Identify where applicable Contract Items or parts thereof to be Performed)	Projected Commencement & Completion Date for Work or for Supplying of Goods and services	Agreed Price Agreed Minimum Price

 TOTAL MINORITY BUSINESS PRICE _____
 TOTAL CONTRACT PRICE _____

PERCENT THAT TOTAL MINORITY BUSINESS PRICE IS OF CONTRACT PRICE _____



The Commonwealth of Massachusetts
Executive Office of Environmental Affairs
100 Cambridge Street
Boston, Massachusetts 02202

MICHAEL S. DUKAKIS
GOVERNOR

EVELYN F. MURPHY
SECRETARY

SPECIFIC PROCEDURE FOR EVALUATION AND REVIEW
OF MAJOR AND COMPLICATED PROJECT

PROJECT NAME: Copley Place

EOEA NUMBER: 03074

PROJECT PROPONENT: Urban Investment and Development Company

Pursuant to G. L. Ch. 30, secs. 62A and 62F, and sections 10.1 and 10.2 of the Executive Office of Environmental Affairs Regulations Governing the Implementation of the Massachusetts Environmental Policy Act, the Secretary of Environmental Affairs declares the above project a major and complicated project and, with the consent of the undersigned proponent and permitting agencies, establishes the following specific procedure for its evaluation and review:

Land acquisition and other actions required for land acquisition may take place prior to the publication of the final EIR provided that the Secretary has made a determination that the draft EIR demonstrates to the satisfaction of the Secretary that the project may be carried out on the proposed site with appropriate constraints as may be necessary to minimize and prevent damage to the environment. Such land acquisition shall be in the form of a lease entered into by the Massachusetts Turnpike Authority with either a corporation which has been granted status under G. L. c. 121A, or with an entity which is obligated to assign the lease to such a corporation upon the meeting of certain conditions, as spelled out in the lease.

Such specific procedure shall supplement, but not supplant, the normal procedures for review of draft and final environmental impact reports provided by G. L. Ch. 30 secs. 62-62H and the Regulations implementing those sections.

COPLEY PLACE - SPECIFIC PROCEDURE FOR MAJOR AND COMPLICATED PROJECT

December , 1978

Evelyn F. Murphy

Consented to:

December / , 1978



Boston Redevelopment Authority

December , 1978

Massachusetts Turnpike Authority

December , 1978

Department of Environmental Quality
Engineering

THE FIRST NATIONAL BANK OF BOSTON
Old Colony Trust Division

CORPORATE TRUST DIVISION

January 29, 1980

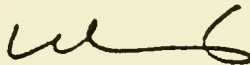
Massachusetts Turnpike Authority
Suite 3000
Prudential Center
Boston, Massachusetts 02199

Urban Investment and Development Co.
Suite 4500
John Hancock Office Building
200 Clarendon Street
Boston, Massachusetts 02166

Gentlemen:

This is to confirm that The First National Bank of Boston has agreed to act as Escrow Agent under the terms of Schedule B to your Amended and Restated Copley Place Lease, and will hold and duly account for the Security Deposit therein referred to. In no event will the Bank assume any obligation or responsibility relative to the other provisions of the said Lease.

Very truly yours,



W. N. Burnett
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